TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1537

SYLVESTER H. KNEELAND, APPELLANT,

vs.

GEORGE WILLIAM BALLOU, TRUSTEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED JANUARY 10, 1890.

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1 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, in said district, on the first Tuesday of November, in the year of our Lord one thousand eight hundred and eighty-nine, before the Honorable Walter Q. Gresham, judge of the circuit court of the United States for the district of Indiana, and the Honorable William A. Woods, judge of the district court of the United States for the district of Indiana and *ex officio* judge of said circuit court.

THE CENTRAL TRUST COMPANY OF NEW YORK
vs.
THE TOLEDO, DELPHOS AND BURLINGTON RAILROAD COMPANY *et al.*
7706. Chancery.

EDWARD F. LEONARD *et al.*
vs.
THE TOLEDO, CINCINNATI AND ST. LOUIS RAILROAD COMPANY *et al.*
7814. Chancery. Consolidated Causes.

THE CENTRAL TRUST COMPANY OF NEW YORK
vs.
THE TOLEDO, CINCINNATI AND ST. LOUIS RAILROAD COMPANY *et al.*
7815.

Be it remembered that heretofore, to wit, at the November term, 1885, of said court, on the 7th day of January, 1886, before the Honorable William A. Woods, one of the judges of said court, George William Ballou filed his intervening petition in the causes above entitled in the words following, to wit:

To the honorable the judges of said court, in chancery sitting:

And now comes George Wm. Ballou, and, leave having been granted by the court to file this his intervening petition, says that he is a citizen of the city and State of New York, and that
2 prior to the first day of June, A. D. 1880, the Toledo, Delphos & Burlington Railroad Company was a corporation duly organized and existing under the laws of the States of Ohio and Indiana, with the right to fully construct a railroad between the city of Toledo, Ohio, and the town of Kokomo, Indiana, a distance by its route of about one hundred and eighty-four miles, and the greater part of which railroad was at said date constructed and balance in process of construction.

And your petitioner states that on said date Messrs. Geo. Wm. Ballou & Co., a copartnership firm doing business in the city of Boston and State of Massachusetts, were the owners of certain railroad equipment and rolling stock suitable for the business and operations of said railroad company, whose railroad was of narrow or three-foot gauge, to wit, six (6) locomotives, ten (10) box freight cars, eighty (80) flat freight cars, and two hundred (200) freight car trucks, the latter made of extra strength, so that, by means of what is known

as a transfer, the bodies of freight cars in use on standard-gauge railroads could be placed upon said trucks and so be safely transported over the railroad of said railroad company to destination on said railroad and thence returned, and by said transfer again hoisted off intervenor's trucks and again placed upon the standard gauge trucks from which they were taken.

And your petitioner states that said equipment was especially suitable for the wants of said railroad company, and that the operation and income of said railroad company were seriously injured for want of the same.

And your petitioner further states that said railroad company, not having the means with which to buy said equipment, desired
3 to lease the same from the owners thereof; and thereupon, after due negotiations, the said owners and said railroad company and your petitioner and one F. M. Holmes entered into a written contract under the seals of said Geo. Wm. Ballou & Co. and said railroad company and the signatures of said Geo. Wm. Ballou and F. M. Holmes.

And your petitioner further states that in said written contract said Geo. Wm. Ballou & Co. agreed to lease to the said Toledo, Delphos & Burlington Railroad Company and the said railroad company agreed to hire from said Geo. Wm. Ballou & Co. six (6) locomotives, known as T., D. & B. R. R., Nos. 12 to 17, both numbers inclusive; ten box freight cars, known as T., D. & B. R. R., Nos. 171 to 180, both numbers inclusive; eighty (80) flat freight cars, Nos. 301 to 380, both numbers inclusive, and two hundred (200) freight-car trucks, numbered from two thousand and thirty-seven (2037) to twenty-two hundred and thirty-six (2236), both numbers inclusive.

And your petitioner further states that afterward and before the delivery of said equipment, by agreement, the numbers of said box freight cars were changed from Nos. 171 to 180, inclusive, to Nos. 557 to 566, inclusive, by which numbers they are now and ever since their delivery have been known.

And your petitioner further states that said lease was to be for the term of ten years from and after said June 1st, 1880, and that the rent for said leasing should be as follows: That the said railroad company should execute and deliver to said Geo. Wm. Ballou & Co. one hundred equipment bonds, dated June 1st, 1880, due ten years after date, each for the sum of one thousand dollars, and bearing seven per cent. interest, payable semi-annually, which should be evidenced by coupons attached to said bonds, which said bonds should be named series A and numbered, consecutively, from
4 1 to 100, and which said bonds should be according to a form agreed upon between said parties, and a copy of which was inserted in said contract of lease, as also a copy of the coupons to be annexed to said bonds; and said contract of lease further provided that said equipment bonds should be properly lithographed at the expense of said railroad company, which said equipment bonds, being so executed and delivered by said railroad company to said Geo. Wm. Ballou & Co., should be by them received in full as and for

such rent for the entire term of ten years from June 1st, 1880, to June 1st, 1890.

And which said contract of lease further provided that in order to more fully protect the interests of the holders of said bonds and in pursuance of an agreement therefor the said Geo. Wm. Ballou & Co., contemporaneously with the execution thereof, should assign said contract of lease and all their right, title, and interest in and by virtue of said lease to your petitioner and one F. M. Holmes, as trustees for the holders of said equipment trust bonds and the coupons annexed thereto, and which said bonds and the coupons annexed thereto said railroad company agreed to promptly pay when they severally became due, as was in said contract of lease provided, as follows:

The said railroad company agreed to pay promptly, on the first day of June and December in each year during said period of time for which said rolling stock was leased, and beginning on December 1st, 1880, to said Geo. Wm. Ballou and F. M. Holmes, at the office of Geo. Wm. Ballou & Co., in New York city, the sum of six thousand dollars, which said sum they (said trustees) should expend as follows:

First. They should, on the day of said payment, pay all coupons due on any of said bonds then outstanding.

Second. They should pay any and all expenses connected with their said trust.

Third. They should devote any sum remaining to purchasing and retiring of said bonds in the manner set out in said contract of lease.

Said contract of lease further provides that the Toledo, Delphos & Burlington Railroad Company agrees to pay promptly on the day they become due all of said equipment trust bonds not already retired, together with interest thereon, and reserves the right to redeem and retire said bonds at any time after June 1st, 1885, and that after said date said trustees shall not pay more than par and accrued interest for said bonds.

Said contract further provides that in case of a default in the payment of said semi-annual payments or any part of them or any portion of any of them on the day when the same are due and payable, and in case of default in the payment of said coupons or any portion thereof, said bonds or any portion thereof, and in case of violation of any of the provisions of said contract by the Toledo, Delphos & Burlington Railroad Company, the trustees named in said contract of lease shall have the right, at their option, and at the written request of the holders of a majority of the bonds then outstanding it shall be their duty, without notice, to enter upon the premises of said railroad company and elsewhere — to remove any and all of said rolling stock, and, with or without notice, to sell at public or private sale the same or any portion thereof and apply the proceeds to the payment of the outstanding bonds and coupons and interest thereon, and in case of any such proceedings the principal of said bonds shall, at the option of the holders, forthwith become due and payable.

6 And said contract further provides that if the proceeds of any such sale or sales shall exceed the expenses of said trust and the payment of said bonds and all interest thereon, then such surplus shall be paid to the Toledo, Delphos & Burlington Railroad Company, but if the proceeds of the sale of said rolling stock shall not be sufficient to pay the expenses of such sale, this trust, and the principal and the interest of said bonds, then the said Toledo, Delphos & Burlington Railroad Company shall forthwith, on demand, pay the balance; and, further, that said railroad company further agreed to do and perform the following things, viz: To keep all of said rolling stock in good repair, and if any of the same be lost or destroyed to replace the same with others of like quality and kind, and also to cause each of said engines, cars, and trucks to be insured for the benefit of trustees herein, and to replace any and all of said rolling stock destroyed by fire, and also, in order that the ownership may *anyways* be known, the said railroad company shall cause to be painted in a conspicuous place and so it can be plainly read the following on each car, engine, and truck, "B. C. T., series A," and for the purposes of this trust the said Geo. Wm. Ballou & Co. and the holders of the said bonds shall be known as the "Boston car trust," and also in case said letters and words should in any way become indistinct or erased, then to cause the same to be repainted; also pay all taxes and assessments levied on said rolling stock or any portion thereof; also that in case said Geo. Wm. Ballou and F. M. Homes should at any time be unable for any cause to perform the duties of trustees, then they shall for such time name and communicate in writing to said company their successors.

7 And your petitioner states that in accordance with the provisions of said contract of lease that said Geo. Wm. Ballou & Co. assigned to your petitioner and F. M. Holmes, as trustees, for the benefit of the holders of the bonds and coupons described therein, all their right, title, and interest in and to said lease, and that said Ballou and Holmes accepted said trust, as will more fully appear by the said assignment to be exhibited to the court.

And your petitioner further states that on the thirteenth of September, 1884, the said F. M. Holmes departed this life, leaving your petitioner sole trustee of said trust, and he brings this suit and files this intervening petition as surviving trustee.

Your petitioner further states that all of said equipment, rolling stock, cars, engines, and trucks were delivered to said railroad company immediately on the execution of the said contract of lease and have ever since been in use by said company and its successors, including said defendant, The Toledo, Cincinnati & St. Louis Railroad Company, and came into the hands of the receiver of this court on the 1st day of August, 1883, immediately after his appointment, who used all of the same continuously in the operation of said road until January 1st, 1885, when, by decree of this court, he disaffirmed said contract of lease and tendered back to your petitioner all the equipment described therein.

Your petitioner further states that a form of bond, coupon, and contract was agreed upon between said Geo. Wm. Ballou & Co. and

said railroad company, which were then duly lithographed and printed at the expense of said company and which were then duly executed by all the parties thereto and delivered to said Geo. Wm. Ballou & Co., who sold them in the regular course of business, and they are now in the possession and belong to *bona fide* investors. A blank copy of said contract of lease, containing copies of the
8 bond and coupon, is hereto attached.

Your petitioner further states that said railroad company afterwards, by means of consolidation with other railroad corporations, as set out in the original bill herein, became and was the defendant, The Toledo, Cincinnati & St. Louis Railroad Company, and which consolidated railroad company by operation of law became entitled to all the rights and property of said Toledo, Delphos & Burlington Railroad Company, and also by operation of law assumed and became liable for all its obligations, including those hereinbefore mentioned given to said Geo. Wm. Ballou & Co.

And your petitioner further states that afterward, to wit, on August 1st, 1883, by order of this court, on application of complainant herein and others, a receiver of the court took possession, not only of all the railway described in the original bill herein, but also of all the rolling stock belonging to your petitioner and hereinbefore described, and after using the same until January 1st, 1885, by like order of the court returned the same to your petitioner.

And your petitioner states that said railroad company and its successors, including the defendant railroad company, paid to said trustees, Geo. Wm. Ballou and F. M. Holmes, either or both of them, only the sum of two thousand two hundred dollars on the obligations hereinbefore mentioned, that sum being the entire amount ever paid on the said obligations, and that neither said railroad company nor its successors nor said defendant, The Toledo, Cincinnati & St. Louis Railroad Company, nor any one else have ever paid any other or further sum.

And your petitioner states that while in the possession of the receiver of this court the aforesaid trucks, cars, and engines
9 have been greatly injured and damaged and many of the cars destroyed; also that locomotive number eighteen (18), so belonging to your petitioner, was destroyed while in the service of said receiver.

And your petitioner, said Geo. Wm. Ballou, for a further and additional cause of complaint against said defendant railroad company, says that he is a citizen of the city and State of New York, and that prior to the 1st day of November, A. D. 1880, the Toledo, Delphos & Burlington Railroad Company was a corporation duly organized and existing under the laws of the States of Ohio and Indiana, with the right to fully construct a railroad between the city of Toledo, Ohio, and the town of Kokomo, Indiana, a distance by its route of about one hundred and eighty-four miles, and the town of Delphos, Ohio, to the city of Dayton, Ohio, a distance of ninety-eight miles, and the greater part of which railroad was at said date constructed and balance in process of construction.

And your petitioner states that on said date Messrs. Geo. Wm.

Ballou & Co., a copartnership firm doing business in the city of Boston and State of Massachusetts, were the owners of certain railroad equipment and rolling stock suitable for the business and operations of said railroad company, whose railroad was of narrow or three-foot gauge, to wit, six (6) locomotives and one hundred (100) flat freight cars.

And your petitioner states that said equipment was especially suitable for the wants of said railroad company, and that the operations and income of said railroad company were seriously injured for the want of the same.

And your petitioner further states that said railroad company, not having the means with which to buy said equipment, desired to lease the same from the owners thereof; and thereupon, after
10 due negotiations, the said owners and said railroad company and your petitioner and one F. M. Holmes entered into a written contract under the seals of Geo. Wm. Ballou & Co. and said railroad company and the signatures of said Geo. Wm. Ballou and F. M. Holmes.

And your petitioner further states that in said written contract said Geo. Wm. Ballou & Co. agreed to lease to the said Toledo, Delphos & Burlington Railroad Company and the said railroad company agreed to hire from said Geo. Wm. Ballou & Co. six locomotives, known as T., D. & B R. R., Nos. 18 to 25, both numbers inclusive; seventy (70) box freight cars, known as T., D. & B. R. R., Nos. 567 to 636, both numbers inclusive; one hundred (100) flat freight cars, Nos. 381 to 480, both numbers inclusive, and twenty-two freight-car trucks, numbered from twenty-two hundred and thirty-seven (2237) to twenty-two hundred and fifty-eight (2258), both numbers inclusive.

And your petitioner further states that said lease was to be for the term of ten years from and after said November 1st, 1880, and that the rent for said leasing should be as follows: That the said railroad company should execute and deliver to said Geo. Wm. Ballou & Co. one hundred equipment bonds, dated November 1st, 1880, due ten years after date, each for the sum of one thousand dollars, and bearing seven per cent. interest, payable semi-annually, which should be evidenced by coupons attached to said bonds, which said bonds should be named series B and numbered consecutively from 1 to 100, and which said bonds should be according to a form agreed upon between said parties, and a copy of which was inserted in said contract of lease, as also a copy of the coupons to be annexed to said bonds; and said contract of lease further provided that said equip-
11 ment bonds should be properly lithographed at the expense of said railroad company, which said equipment bonds, being so executed and delivered by said railroad company to said Geo. Wm. Ballou & Co., should be by them received in full as and for such rent for the entire term of ten years from November 1st, 1880, to November 1st, 1890.

And which said contract of lease further provided that in order to more fully protect the interests of the holders of said bonds and in pursuance of an agreement therefor the said Geo. Wm. Ballou

& Co., contemporaneously with the execution thereof, should assign said contract of lease and all their right, title, and interest in and by virtue of said lease to your petitioner and one F. M. Holmes, as trustees for the holders of said equipment trust bonds and the coupons annexed thereto, and which said bonds and the coupons annexed thereto said railroad company agreed to promptly pay when they severally became due, as was in said contract of lease provided, as follows:

The said railroad company agreed to pay promptly, on the first day of November and May in each year during said period of time for which said rolling stock was leased, and beginning on May 1st, 1881, to said Geo. Wm. Ballou and F. M. Holmes, at the office of Geo. Wm. Ballou & Co., in New York city, the sum of six thousand dollars, which said sum they, said trustees, should expend as follows:

First. They should, on the day of said payment, pay all coupons due on any of said bonds then outstanding.

Second. They should pay any and all expenses connected with their said trust.

Third. They should devote any sum remaining to the purchasing and retiring of said bonds in the manner set out in said contract of lease.

12 Said contract of lease further provides that the Toledo, Delphos & Burlington Railroad Company agrees to pay promptly on the day they become due all of said equipment trust bonds not already retired, together with interest thereon, and reserves the right to redeem and retire said bonds at any time after November 1st, 1880, and that after said date said trustees shall not pay more than par and accrued interest for said bonds.

Said contract further provides that in case of a default in the payment of said semi-annual payments or any part of them or any portion of any of them on the day when the same are due and payable, and in case of default in the payment of said coupons or any portion thereof, said bonds or any portion thereof, and in case of any violation of any of the provisions of said contract by the Toledo, Delphos & Burlington Railroad Company, the trustees named in said contract of lease shall have the right, at their option, and at the written request of the holders of a majority of the bonds then outstanding it shall be their duty, without notice, to enter upon the premises of said railroad company and elsewhere and to remove any and all of said rolling stock, and, with or without notice, to sell at public or private sale the same or any portion thereof and apply the proceeds to the payment of the outstanding bonds and coupons and interest thereon, and in case of any such proceedings the principal of said bonds shall, at the option of the holders, forthwith become due and payable.

And said contract further provides that if the proceeds of any such sale or sales shall exceed the expenses of said trust and the payment of said bonds and all interest thereon, then such surplus shall be paid to the Toledo, Delphos & Burlington Railroad

13 Company, but if the proceeds of the sale of said rolling

stock shall not be sufficient to pay the expenses of such sale, this trust, and the principal and interest of said bonds, then the said Toledo, Delphos & Burlington Railroad Company shall forthwith, on demand, pay the balance; and, further, that said railroad company further agreed to do and perform the following things, viz: To keep all of said rolling stock in good repair, and if any of the same be lost or destroyed to replace the same with others of like quality and kind, and also to cause each of said engines, cars, and trucks to be insured for the benefit of trustees herein, and to replace any and all of said rolling stock destroyed by fire, and also, that the ownership may always be known, the said railroad company shall cause to be painted in a conspicuous place and so it can be plainly read the following on each car, engine, and truck, "B. C. T., series B," and for the purposes of this trust the said Geo. Wm. Ballou & Co. and the holders of the said bonds shall be known as the "Boston car trust," and also in case said letters and words should in any way become indistinct or erased, then to cause the same to be repainted; also pay all taxes and and assessments levied on said rolling stock or any portion thereof; also that in case said Geo. Wm. Ballou and F. M. Holmes should at any time be unable for any cause to perform the duties of trustees, then they shall for such time name and communicate in writing to said company their successors.

And your petitioner states that in accordance with the provisions of said contract of lease said Geo. Wm. Ballou & Co. assigned to your petitioner and F. M. Holmes, as trustees, for the benefit of the holders of the bonds and coupons described therein, all their right, title, and interest in and to said lease, and that said Ballou and Holmes accepted said trust, as will more fully appear by the
14 said assignment to be exhibited to the court.

And your petitioner further states that on the thirteenth of September, A. D. 1884, the said F. M. Holmes departed this life, leaving your petitioner sole trustee of said trust, and he brings this suit and files this intervening petition as surviving trustee.

Your petitioner further states that by agreement made after the execution of said contract of lease the box cars and trucks so mentioned and described therein were not to be and were not delivered, but that the six locomotives and one hundred flat cars therein mentioned and described were forthwith delivered to said railroad company and have ever since been in use by said company and its successors, including said defendant, The Toledo, Cincinnati & St. Louis Railroad Company, and came into the hands of the receiver of this court on the 1st day of August, 1883, immediately after his appointment, who used all of the same continuously in the operation of said road until January 1st, 1885, when, by decree of this court, he disaffirmed said contract of lease and tendered back to your petitioner all the equipment described therein.

Your petitioner further states that a form of bond, coupon, and contract was agreed upon between said Geo. Wm. Ballou & Co. and said railroad company, which were then duly lithographed and printed at the expense of said company, and that the contract of lease was thereon duly executed and delivered to said Geo. Wm.

Ballou & Co., but that only seventy-two of the bonds with coupons so annexed were ever executed and delivered to said Geo. Wm. Ballou & Co., who sold the same in the regular course of business, and they are now in the possession of and belong to *bona fide* investors. A blank copy of said contract of lease, containing
15 copies of the bond and coupon, is hereto attached.

Your petitioner further states that said railroad company afterwards, by means of consolidation with other railroad corporations, as set out in the original bill herein, became and was the defendant, The Toledo, Cincinnati & St. Louis Railroad Company, and which consolidated railroad company by operation of law became entitled to all the rights and property of said Toledo, Delphos & Burlington Railroad Company, and also by operation of law assumed and became liable for all its obligations, including those hereinbefore mentioned given to said Geo. Wm. Ballou & Co.

And your petitioner further states that afterward, to wit, on August 1st, 1883, by order of this court, on application of complainant herein and others, a receiver of this court took possession, not only of all the railway described in the original bill herein, but also of all the rolling stock belonging to your petitioner and hereinbefore described, and after using the same until January 1st, 1885, by like order of the court returned the same to your petitioner.

And your petitioner further states that neither said Toledo, Delphos & Burlington Railroad Company nor its successors nor the receiver of this court has ever paid to said trustees or to any one else any sum of money whatever on account of the obligations described in said contract of lease, but that all of said bonds and the coupons thereto annexed are entirely unpaid in whole and in part.

And your petitioner states that while in the possession of the receiver of this court the aforesaid trucks, cars, and engines have been greatly injured and damaged and many of the cars destroyed; also that locomotive number twenty-seven (27) was destroyed while in the service of said receiver.

16 And your petitioner, said Geo. Wm. Ballou, for a further and additional cause of complaint against said defendant railroad company, says that he is a citizen of the city and State of New York, and that prior to the first day of November, A. D. 1880, the Toledo, Delphos & Burlington Railroad Company was a corporation duly organized and existing under the laws of the States of Ohio and Indiana, with the right to fully construct a railroad between the city of Toledo, Ohio, and the town of Kokomo, Indiana, a distance by its route of about one hundred and eighty-four miles, and the town of Delphos, Ohio, to the city of Dayton, Ohio, a distance of ninety-eight miles, and the greater part of which railroad was at said date constructed and balance in process of construction.

And your petitioner states that on said date Messrs. Geo. Wm. Ballou & Co., a copartnership firm doing business in the city of Boston and State of Massachusetts, were the owners of certain railroad equipment and rolling stock suitable for the business and operations of said railroad company, whose railroad was of narrow or three-foot gauge, to wit, four (4) locomotives, seven (7) first-class

passenger coaches, six (6) second-class passenger coaches, two (2) combination passenger coaches, four (4) baggage and mail cars, twenty-five (25) box freight cars, and twenty-four (24) coal freight cars.

And your petitioner states that said equipment was especially suitable for the wants of said railroad company, and that the operations and income of said railroad company were seriously injured for the want of the same.

And your petitioner further states that said railroad company, not having the means with which to buy said equipment, desired to lease the same from the owners thereof; and thereupon, after
17 due negotiations, the said owners and said railroad company and your petitioner and one F. M. Holmes entered into a written contract under the seals of Geo. Wm. Ballou & Co. and said railroad company and the signatures of said Geo. Wm. Ballou and F. M. Holmes.

And your petitioner further states that in said written contract said Geo. Wm. Ballou & Co. agreed to lease to the said Toledo, Delphos & Burlington Railroad Company and the said railroad company agreed to hire from said Geo. Wm. Ballou & Co. four (4) locomotives, known as T., D. & B. R. R. Co., Nos. 24 to 27, both numbers inclusive; seven (7) first-class passenger coaches, known as T., D. & B. R. R., Nos. 8 to 14, both numbers inclusive; six (6) second-class or excursion passenger coaches, known as T., D. & B. R. R., Nos. 15 to 20, both numbers inclusive; two (2) combination passenger coaches, known as T., D. & B. R. R., Nos. 8 and 9; four (4) baggage and express cars, known as T., D. & B. R. R., Nos. 4 to 7, both numbers inclusive; twenty-five (25) box freight cars, known as T., D. & B. R. R., Nos. 712 to 736, both numbers inclusive, and twenty-four (24) coal freight cars, known as T., D. & B. R. R., Nos. 1500 to 1523, both numbers inclusive.

And your petitioner further states that said lease was to be for the term of ten years from and after said November 1st, 1880, and that the rent for said leasing should be as follows: That the said railroad company should execute and deliver to said Geo. Wm. Ballou & Co. one hundred equipment bonds, dated November 1st, 1880, due ten years after date, each for the sum of one thousand dollars, and bearing seven per cent. interest, payable semi-annually, which should be evidenced by coupons attached to said bonds, which said bonds should be named "series C" and numbered consecutively from 1 to 100, and which said bonds should be according to
18 a form agreed upon between said parties, and a copy of which was inserted in said contract of lease, as also a copy of the coupons to be annexed to said bonds; and said contract of lease further provided that said equipment bonds should be properly lithographed at the expense of said railroad company, which said equipment bonds, being so executed and delivered by said railroad company to said Geo. Wm. Ballou & Co., should be by them received in full as and for such rent for the entire term of ten years from November 1st, 1880, to November 1st, 1890.

And which said contract of lease further provided that in order

to more fully protect the interests of the holders of said bonds and in pursuance of an agreement therefor the said Geo. Wm. Ballou & Co., contemporaneously with the execution thereof, should assign said contract of lease and all their right, title, and interest in and by virtue of said lease to your petitioner and one F. M. Holmes, as trustees for the holders of said equipment trust bonds and the coupons annexed thereto, — said railroad company agreed to promptly pay when they severally became due, as was in said contract of lease provided, as follows:

The said railroad company agreed to pay promptly, on the first day of November and May in each year during said period of time for which said rolling stock was leased, and beginning on May 1st, 1881, to said Geo. Wm. Ballou and F. M. Holmes, at the office of Geo. Wm. Ballou & Co., in New York city, the sum of six thousand dollars, which said sum they should expend as follows:

First. They should, on the day of said payment, pay all coupons due on any of said bonds then outstanding.

Second. They should pay any and all expenses connected with their said trust.

19 Third. They should devote any sum remaining to the purchasing and retiring of said bonds in the manner set out in said contract of lease.

Said contract of lease further provides that the Toledo, Delphos & Burlington Railroad Company agrees to pay promptly on the day they become due all of said equipment trust bonds not already retired, together with interest thereon, and reserves the right to redeem and retire said bonds at any time after November 1st, 1885, and that after said date said trustees shall not pay more than par and accrued interest for said bonds.

Said contract further provides that in case of a default in the payment of said semi-annual payments or any part of them or any portion of any of them on the day when the same are due and payable, and in case of a default in the payment of said coupons or any portion thereof, said bonds or any portion thereof, and in case of any violation of any of the provisions of said contract by the Toledo, Delphos & Burlington Railroad Company, the trustees named in said contract of lease shall have the right, at their option, and at the written request of the holders of a majority of the bonds then outstanding it shall be their duty, without notice, to enter upon the premises of said railroad company and elsewhere and to remove any and all of said rolling stock, and, with or without notice, to sell at public or private sale the same or any portion thereof and apply the proceeds to the payment of the outstanding bonds and coupons and interest thereon, and in case of any such proceedings the principal of said bonds shall, at the option of the holders, forthwith become due and payable.

And said contract further provides that if the proceeds of any such sale or sales shall exceed the expenses of said trust and the payment of said bonds and all interest thereon, then such

20 surplus shall be paid to the Toledo, Delphos & Burlington Railroad Company, but if the proceeds of the sale of said

rolling stock shall not be sufficient to pay the expenses of such sale, this trust, and the principal and interest of said bonds, then the said Toledo, Delphos & Burlington Railroad Company shall forthwith, on demand, pay the balance; and, further, that said railroad company agreed to do and perform the following things, viz: To keep all of said rolling stock in good repair, and if any of the same be lost or destroyed to replace the same with others of like quality and kind, and also to cause each of said engines, cars, and trucks to be insured for the benefit of trustees herein, and to replace any and all of said rolling stock destroyed by fire, and also, that the ownership may always be known, the said railroad company shall cause to be painted in a conspicuous place and so it can be plainly read the following on each car, engine, and truck, "B. C. T., series C," and for the purposes of this trust the said Geo. Wm. Ballou & Co. and the holders of said bonds shall be known as the "Boston car trust," and also in case said letters and words should in any way become indistinct or erased, then to cause the same to be repainted, and also pay all taxes and assessments levied on said rolling stock or any portion thereof; also that in case said Geo. Wm. Ballou and F. M. Holmes should at any time be unable for any cause to perform the duties of trustees, then they shall for such time name and communicate in writing to said company their successors.

And your petitioner states that in accordance with the provisions of said contract of lease said Geo. Wm. Ballou & Co. assigned to your petitioner and F. M. Holmes, as trustees, for the benefit
21 of the holders of the bonds and coupons described therein, all their right, title, and interest in and to said lease, and that said Ballou and Holmes accepted said trust, as will more fully appear by the said assignment to be exhibited to the court.

And your petitioner further states that on the thirteenth of September, A. D. 1884, the said F. M. Holmes departed this life, leaving your petitioner sole trustee of said trust, and he brings this suit and files this intervening petition as surviving trustee.

Your petitioner further states that all of said equipment, rolling stock, cars, and engines were delivered to said railroad company immediately on the execution of said contract of lease and have ever since been in use by said company and its successors, including said defendant, The Toledo, Cincinnati & St. Louis Railroad Company, and came into the hands of the receiver of this court on the 1st day of August, 1883, immediately after his appointment, who used all of the same continuously in the operation of said road until January 1st, 1885, when, by order of this court, he disaffirmed said contract of lease and tendered back to your petitioner all the equipment described therein.

And your petitioner further states that a form of bond, coupon, and contract was agreed upon between said Geo. Wm. Ballou & Co. and the said railroad company, which were then duly lithographed and printed at the expense of said railroad company; and that the said contract of lease was thereupon duly executed and delivered to said Geo. Wm. Ballou & Co., and also all the said bonds and coupons were then executed and delivered to said Geo. Wm. Ballou & Co.,

who sold the same in the regular course of business, and they are now in the possession of and belong to *bona fide* investors. A
22 blank form of said contract of lease, containing copies of the bond and coupon, is hereto attached.

Your petitioner further states that said railroad company afterwards, by means of consolidation with other railroad corporations, as set out in the original bill herein, became and was the defendant, The Toledo, Cincinnati & St. Louis Railroad Company, and which consolidated railroad company by operation of law became entitled to all the rights and property of said Toledo, Delphos & Burlington Railroad Company, and also by operation of law assumed and became liable for all its obligations, including those hereinbefore mentioned given to said Geo. Wm. Ballou & Co.

And your petitioner further states that afterward, to wit, on August 1st, 1883, by order of this court, by application of complainant herein and others, a receiver of this court took possession, not only of all the railway described in the original bill herein, but also of all the rolling stock belonging to your petitioner and hereinbefore described, and after using the same until January 1st, 1885, by like order of this court returned the same to your petitioner.

And your petitioner further states that neither said Toledo, Delphos & Burlington Railroad Company nor its successors nor the receiver of this court has ever paid to said trustees or any one else any sum of money whatever on account of the obligations described in said contract of lease, but that all of said bonds and the coupons thereto annexed are entirely unpaid in whole and in part.

And your petitioner states that while in the possession of the receiver of this court the aforesaid cars and engines have been greatly injured and damaged and many of the cars destroyed.

23 And your petitioner, said Geo. Wm. Ballou, for a further and additional cause of complaint against said defendant railroad company, says that he is a citizen of the city and State of New York, and that prior to the 1st day of October, A. D. 1880, the Toledo, Delphos & Burlington Railroad Company was a corporation duly organized and existing under the laws of the States of Ohio and Indiana, with the right to fully construct a railroad between the city of Toledo, Ohio, and the town of Kokomo, Indiana, a distance by its route of about one hundred and eighty-four miles, and the town of Delphos, Ohio, to the city of Dayton, Ohio, a distance of ninety-eight miles, and the greater part of which railroad was at said date constructed and balance in process of construction.

And your petitioner states that on said date Messrs. Geo. Wm. Ballou & Co., a copartnership firm doing business in the city of Boston and State of Massachusetts, were the owners of certain railroad equipment and rolling stock suitable for the business and operations of said railroad company, whose railroad was of narrow or three-foot gauge, to wit, one hundred and seventy-five (175) box freight cars and one hundred (100) flat freight cars.

And your petitioner states that said equipment was especially suitable for the wants of said railroad company, and that the op-

erations and income of said railroad company were seriously injured for the want of the same.

And your petitioner further states that said railroad company, not having the means with which to buy said equipment, desired to lease the same from the owners thereof; and thereupon, after due negotiations, the said owners and said railroad company and your petitioner and one F. M. Holmes entered into a written con-
24 tract under the seals of Geo. Wm. Ballou & Co. and said railroad company and the signatures of said Geo. Wm. Ballou and F. M. Holmes.

And your petitioner further states that in said written contract said Geo. Wm. Ballou & Co. agreed to lease to the said Toledo, Delphos & Burlington Railroad Company and the said railroad company agreed to hire from Geo. Wm. Ballou & Co. one hundred and seventy-five (175) box freight cars, known as T., D. & B. R. R., Nos. 737 to 911, both numbers inclusive, and one hundred (100) flat freight cars, known as T., D. & B. R. R., Nos. 461 to 580, both numbers inclusive.

And your petitioner further states that said lease was to be for the term of ten years from and after said October 1st, 1880, and that the rent for said leasing should be as follows: That the said railroad company should execute and deliver to said Geo. Wm. Ballou & Co. one hundred equipment bonds, dated October 1st, 1880, due ten years after date, each for the sum of one thousand dollars, and bearing seven per cent. interest, payable semi-annually, which should be evidenced by coupons attached to said bonds, which said bonds should be named series D and numbered consecutively from 1 to 100, and which said bonds should be according to a form agreed upon between said parties, and a copy of which was inserted in said contract of lease, as also a copy of the coupons to be annexed to said bonds; and said contract of lease further provided that said equipment bonds should be properly lithographed at the expense of said railroad company, which said equipment bonds, being so executed and delivered by said railroad company to said Geo. Wm. Ballou & Co., should be by them received in full as and for such rent for the entire term of ten years from October 1st, 1880, to October 1st, 1890.

25 And which said contract of lease further provided that in order to more fully protect the interests of the holders of said bonds and in pursuance of an agreement therefor the said Geo. Wm. Ballou & Co., contemporaneously with the execution thereof, should assign said contract of lease and all their right, title, and interest in and by virtue of said lease to your petitioner and one F. M. Holmes, as trustees for the holders of said equipment trust bonds and the coupons annexed thereto, — said railroad company agreed to promptly pay when they severally became due, as was in said contract of lease provided, as follows:

The said railroad company agreed to pay promptly, on the first day of October and April in each year during said period of time for which said rolling stock was leased, and beginning on April 1st, 1881, to said Geo. Wm. Ballou and F. M. Holmes, at the office of

Geo. Wm. Ballou & Co., in New York city, the sum of six thousand dollars, which said sum they should expend as follows:

First. They should, on the day of said payment, pay all coupons due on any of said bonds then outstanding.

Second. They should pay any and all expenses connected with their said trust.

Third. They should devote any sum remaining to the purchasing and retiring of said bonds in the manner set out in said contract of lease.

Said contract of lease further provides that the Toledo, Delphos & Burlington Railroad Company agrees to pay promptly on the day they become due all of said equipment trust bonds not already retired, together with interest thereon, and reserves the right to redeem and retire said bonds at any time after October 1st, 1885, and that after said date said trustees shall not pay over par and accrued interest for said bonds.

26 Said contract further provides that in case of a default in the payment in said semi-annual payments or any part of them or any portion of any of them on the day when the same are due and payable, and in case of default in the payment of said coupons or any portion thereof, said bonds or portion thereof, and in case of any violation of any of the provisions of said contract by the Toledo, Delphos & Burlington Railroad Company, the trustees named in said contract of lease shall have the right, at their option, and at the written request of the holders of a majority of the bonds then outstanding it shall be their duty, without notice, to enter upon the premises of said railroad company and elsewhere and to remove any and all of said rolling stock, and, with or without notice, to sell, at public or private sale the same or any portion thereof and apply the proceeds to the payment of the outstanding bonds and coupons and interest thereon, and in case of any such proceedings the principal of said bonds shall, at the option of the holders, forthwith become due and payable.

And said contract further provides that if the proceeds of any such sale or sales shall exceed the expenses of said trust and the payment of said bonds and all interest thereon, then such surplus shall be paid to the Toledo, Delphos & Burlington Railroad Company, but if the proceeds of the sale of said rolling stock shall not be sufficient to pay the expenses of such sale, this trust, and principal and interest of said bonds, then the said Toledo, Delphos & Burlington Railroad Company shall forthwith, on demand, pay the balance; and, further, that said railroad company further agree to do and perform the following things, viz: To keep all of said rolling stock in good repair, and if any of the same be lost or destroyed to replace the same with others of like quality and kind, and also to cause each of said engines, cars, and trucks to be insured

27 for the benefit of trustees herein, and to replace any and all of said rolling stock destroyed by fire, and also, in order that the ownership may always be known, the said railroad company shall cause to be painted in a conspicuous place and so it can be plainly read the following on each car, engine, and truck, "B. C.

T., series D," and for the purposes of this trust the said Geo. Wm. Ballou & Co. and the holders of the said bonds shall be known as the "Boston car trust," and also in case said letters and words should in any way become indistinct or erased, then to cause the same to be repainted; also pay all taxes and assessments levied on said rolling stock or any portion thereof; also that in case said Geo. Wm. Ballou and F. M. Holmes should at any time be unable for any cause to perform the duties of trustees, then they shall for such time name and communicate in writing to said company their successors.

And your petitioner states that in accordance with the provisions of said contract of lease said Geo. Wm. Ballou & Co. assigned to your petitioner and F. M. Holmes, as trustees, for the benefit of the holders of the bonds and coupons described therein, all their right, title, and interest in and to said lease, and that said Ballou and Holmes accepted said trust, as will more fully appear by the said assignment to be exhibited to the court.

And your petitioner further states that on the thirteenth of September, A. D. 1884, the said F. M. Holmes departed this life, leaving your petitioner sole trustee of said trust, and he brings this suit and files this intervening petition as surviving trustee.

Your petitioner further states that all of said equipment, rolling stock, cars, and engines were delivered to said railroad com-
28 pany immediately on the execution of said contract of lease and have ever since been in use by said company and its successors, including said defendant, The Toledo, Cincinnati & St. Louis Railroad Company, and came into the hands of the receiver of this court on the 1st day of August, 1883, immediately after his appointment, who used all of the same continuously in the operation of said road until January 1st, 1885, when, by decree of this court, he disaffirmed said contract of lease and tendered back to your petitioner all the equipment described therein.

Your petitioner further states that a form of bond, coupon, and contract was agreed upon between said Geo. Wm. Ballou & Co. and said railroad company, which was then duly lithographed and printed at the expense of said railroad company, and that the contract of lease was thereon duly executed and delivered to said Geo. Wm. Ballou & Co., and also all the said bonds and coupons were then executed and delivered to said Geo. Wm. Ballou & Co., who sold the same in the regular course of business, and they are now in the possession of and belonging to *bona fide* investors. A blank copy of said contract of lease, containing copies of the bond and coupon, is hereto attached.

Your petitioner further states that said railroad company afterwards, by means of consolidation with other railroad corporations, as set out in the original bill herein, became and was the defendant, The Toledo, Cincinnati & St. Louis Railroad Company, and which consolidated railroad company by operation of law became entitled to all the rights and property of said Toledo, Delphos & Burlington Railroad Company, and also by operation of law assumed and became

liable for all its obligations, including those hereinbefore mentioned given to said Geo. Wm. Ballou & Co.

And your petitioner further states that afterward, to wit, on
29 August 1st, 1883, by order of this court, on application of complainant herein, a receiver of this court took possession, not only of all the railway described in the original bill herein, but also of all the rolling stock belonging to your petitioner and hereinbefore described, and after using the same until January 1st, 1885, by like order of the court returned the same to your petitioner.

And your petitioner states that neither said Toledo, Delphos & Burlington Railroad Company nor its successor nor the receiver of this court has ever paid to said trustees or any one else any sum of money on account of the obligations described in said contract of lease, but that all of said bonds and the coupons thereto annexed are entirely unpaid in whole and in part.

And your petitioner states that while in the possession of the receiver of this court the aforesaid cars and engines have been greatly injured and damaged and many of the cars destroyed.

And your petitioner, said Geo. Wm. Ballou, for a further and additional cause of complaint against said defendant railroad company, says that he is a citizen of the city and State of New York, and that prior to the 1st day of April, A. D. 1881, the Toledo, Delphos & Burlington Railroad Company was a corporation duly organized and existing under the laws of the States of Ohio and Indiana, with the right to fully construct a railroad between the city of Toledo, Ohio, and the town of Kokomo, Indiana, a distance by its route of about one hundred and eighty-four miles, and the town of Delphos, Ohio, by way of the city of Dayton, Ohio, to the city of Ironton, Ohio, a distance of two hundred and fifty-eight miles, and the greater part of which railroad was at said date constructed and the balance in process of construction.

30 And your petitioner states that on said date Messrs. Geo. Wm. Ballou & Co., a copartnership firm doing business in the city of Boston and State of Massachusetts, were the owners of certain railroad equipment and rolling stock suitable for the business and operations of said railroad, whose railroad was of narrow or three-foot gauge, to wit, six (6) locomotives, forty (40) box freight cars, and one hundred (100) coal freight cars.

And your petitioner states that said equipment was especially suitable for the wants of said railroad company, and that the operations and income of said railroad company were seriously injured for the want of them.

And your petitioner further states that said railroad company, not having the means with which to buy said equipment, desired to lease the same from the owners thereof; and thereupon, after due negotiations, the said owners and said railroad company and your petitioner and one F. M. Holmes entered into a written contract under the seals of Geo. Wm. Ballou & Co. and said railroad company and the signatures of said Geo. Wm. Ballou and F. M. Holmes.

And your petitioner further states that in said written contract

said Geo. Wm. Ballou & Co. agreed to lease to the said Toledo, Delphos & Burlington Railroad Company and the said railroad company agreed to hire from Geo. Wm. Ballou & Co. six (6) locomotives, known as T., D. & B. R. R., Nos. 28 to 33, both numbers inclusive; forty (40) box freight cars, known as T., D. & B. R. R., Nos. 1000 to 1039, both numbers inclusive, and one hundred (100) coal freight cars, known as T., D. & B. R. R., Nos. 1524 to 1823, both numbers inclusive.

And your petitioner further states that said lease was to be for the term of ten years from and after said April 1st, 1881, and
31 that the rent for said leasing should be as follows: That the said railroad company should execute and deliver to said Geo. Wm. Ballou & Co. one hundred equipment bonds, dated April 1st, 1881, due ten years after date, each for the sum of one thousand dollars, and bearing seven per cent. interest, payable semi-annually, which should be evidenced by coupons attached to said bonds, which said bonds should be named series E and numbered consecutively from 1 to 100, and which said bonds should be according to a form agreed upon between said parties, and a copy of which was inserted in said contract of lease, as also a copy of the coupons to be annexed to said bonds; and said contract of lease further provided that said equipment bonds should be properly lithographed at the expense of said railroad company, which said equipment bonds, being so executed and delivered by said railroad company to said Geo. Wm. Ballou & Co., should be by them received in full as and for such rent for the entire term of ten years from April 1st, 1881, to April 1st, 1891.

And which said contract of lease further provided that in order to more fully protect the interests of the holders of said bonds and in pursuance of an agreement therefor the said Geo. Wm. Ballou & Company, contemporaneously with the execution thereof, should assign said contract of lease and all their right, title, and interest in and by virtue of said lease to your petitioner and one F. M. Holmes, as trustees for the holders of said equipment trust bonds and the coupons annexed thereto, — said railroad company agreed to promptly pay when they severally became due, as was in said contract of lease provided, as follows:

The said railroad company agreed to pay promptly, on the first day of October and April in each year during said period of time for which said rolling stock was leased, and beginning on October
1st, 1881, to said Geo. Wm. Ballou and F. M. Holmes, at the
32 office of Geo. Wm. Ballou & Co. in New York city, the sum of six thousand dollars, which said sum they, the trustees, should expend as follows:

First. They should, on the day of said payment, pay all coupons due on any of said bonds then outstanding.

Second. They should pay any and all expenses connected with their trust.

Third. They should devote any sum remaining to the purchasing and retiring of said bonds in the manner set out in the said contract of lease.

Said contract of lease further provides that the Toledo, Delphos & Burlington Railroad Company agrees to pay promptly on the day they become due all of said equipment trust bonds not already retired, together with interest thereon, and reserves the right to redeem and retire said bonds at any time after April 1st, 1886, and that after said date the trustees shall not pay more than par and accrued interest for said bonds.

Said contract further provides that in case of a default in the payment of said semi-annual payments or any part of them or any portion of any of them on the day when the same are due and payable, and in case of default in the payment of said coupons or any portion thereof, said bonds or any portion thereof, and in case of any violation of any of the provisions of said contract by the Toledo, Delphos & Burlington Railroad Company, the trustees named in said contract of lease shall have the right, at their option, and at the written request of the holders of a majority of the bonds then outstanding it shall be their duty, without notice, to enter upon the premises of said railroad company and elsewhere and to remove any and all of said rolling stock, and, with or without notice, to sell at public
33 or private sale the same or any portion thereof and apply the proceeds to the payment of the outstanding bonds and coupons and interest thereon, and in case of any such proceedings the principal of said bonds shall, at the option of the holders, forthwith become due and payable.

And said contract further provides that if the proceeds of any such sale or sales shall exceed the expenses of said trust and the payment of said bonds and all interest thereon, then such surplus shall be paid to the Toledo, Delphos & Burlington Railroad Company, — shall forthwith, on demand, pay the balance; and, further, that said railroad company further agreed to do and perform the following things, viz: To keep all of said rolling stock in good repair, and if any of the same be lost or destroyed to replace the same with others of like quality and kind, and also to cause each of said engines, cars, and trucks to be insured for the benefit of trustees herein, and to replace any and all of said rolling stock destroyed by fire, and also, in order that the ownership may always be known, the said railroad company shall cause to be painted in a conspicuous place and so it can be plainly read the following on each car, engine, and truck, "B. C. T., series E," and for the purposes of this trust the said Geo. Wm. Ballou & Co. and the holders of the said bonds shall be known as the "Boston car trust," and also in case said letters and words should in any way become indistinct or erased, then to cause the same to be repainted; also to pay all taxes and assessments levied on said rolling stock or any portion thereof; also that in case said Geo. Wm. Ballou & F. M. Holmes should at any time be unable for any cause to perform the duties of trustees, then they shall for such time name and communicate in writing to said railroad company their successors.

And your petitioner states that in accordance with the
34 provisions of said contract of lease said Geo. Wm. Ballou & Co. assigned to your petitioner and F. M. Holmes, as trustees,

for the benefit of the holders of the bonds and coupons described therein, all their right, title, and interest in and to said lease, and that said Ballou and Holmes accepted said trust, as will more fully appear by the said assignment to be exhibited to the court.

And your petitioner further states that on the thirteenth of September, A. D. 1884, the said F. M. Holmes departed this life, leaving your petitioner sole trustee of said trust, and he brings this suit and files this intervening petition as surviving trustee.

Your petitioner further states that all of said equipment, rolling stock, cars, and engines were delivered to said railroad company immediately on the execution of said contract of lease and have ever since been in use by said company and its successors, including said defendant, The Toledo, Cincinnati & St. Louis Railroad Company, and came into the hands of the receiver of this court on the 1st day of August, 1883, immediately after his appointment, who used all of the same continuously in the operation of said road until January 1st, 1885, when, by decree of this court, he disaffirmed said contract of lease and tendered back to your petitioner all the equipment described therein.

Your petitioner further states that a form of bond, coupon, and contract was agreed upon between said Geo. Wm. Ballou & Co. and said railroad company, which were then duly lithographed and printed at the expense of said railroad company, and that the contract of lease was thereupon duly executed and delivered to said Geo. Wm. Ballou & Co., and also all the said bonds and coupons were then executed and delivered to said Geo. Wm. Ballou & Co., who sold the same in the regular course of business, and they are now in the possession of and belonging to *bona fide* investors. A blank copy of said contract of lease, containing copies of the bond and coupon, is hereto attached.

Your petitioner further states that said railroad company afterwards, by means of consolidation with other railroad corporations, as set out in the original bill herein, became and was the defendant, The Toledo, Cincinnati & St. Louis Railroad Company, and which consolidated railroad company by operation of law became entitled to all the rights and property of said Toledo, Delphos & Burlington Railroad Company, and also by operation of law assumed and became liable for all its obligations, including those hereinbefore mentioned given to said Geo. Wm. Ballou & Co.

And your petitioner further states that afterward, to wit, on August 1st, 1883, by order of this court, on application of complainant herein and others, a receiver of this court took possession, not only of all the railway described in the original bill herein, but also of all the rolling stock belonging to your petitioner and hereinbefore described, and after using the same until January 1st, 1885, by like order of the court returned the same to your petitioner.

And your petitioner further states that neither said Toledo, Delphos & Burlington Railroad Company nor its successors nor the receiver of this court has ever paid to said trustees or any one else any sum of money whatever on account of the obligations described in

said contract of lease, but that all of said bonds and the coupons thereto annexed are entirely unpaid, in whole or in part.

36 And your petitioner states that while in the possession of the receiver of this court the aforesaid cars and engines have been greatly injured and damaged and many of the cars destroyed.

And your petitioner states that *it* has filed *its* like petition and praying for the same relief herein prayed for in all the causes in the circuit court for the southern district of Ohio, northern district of Ohio, district of Indiana, and southern district of Illinois, on the chancery side thereof, in which the said defendant, The Toledo, Cincinnati & St. Louis Railroad Company, is a defendant with others, which causes are brought, respectively, for the foreclosure of the several mortgages on the various constituent railroads, respectively, which are now merged and consolidated into the Toledo, Cincinnati & St. Louis Railroad Company, and also *its* like petitions in the circuit court of the United States for the district of Indiana in a case therein pending, wherein Granville B. Braman is complainant and the said Toledo, Cincinnati & St. Louis Railroad Company and others are defendants.

Your petitioner prays that an account may be stated between said receiver and your petitioner; that said receiver, out of the funds in his hands arising from the premises described in the original bill of complaint herein, may be decreed to pay your petitioner reasonable rents for said rolling stock, and also for all equipment destroyed while the same was in the said receiver's service; also that said receiver be required to pay your petitioner a sum of money sufficient to put all the said engines, cars, and trucks in good repair, and that the moneys due your petitioner on each of said different contracts of lease be separately stated.

And your petitioner further prays for such other and further relief as in equity he may be entitled to.

37 E. R. CHAPMAN,
JAMES IRWIN,
Solicitors.
GEO. WM. BALLOU.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, } ss:

George William Ballou, being first duly sworn, says that he is the petitioner named in the foregoing petition, which he has carefully read, and that the allegations therein contained are true to the best of his knowledge, information, and belief.

Sworn to before me and subscribed in my presence this 2d day of November, A. D. 1885.

HENRY P. BUTLER,
U. S. Commissioner for the Southern District of N. Y.

And afterwards, to wit, at the November term, 1885, on the 1st day of March, 1886, before the Honorable William A. Woods, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now George William Ballou, by E. R. Chapman and James Irwin, his attorneys, and files his claim herein in the words following, to wit:

George William Ballou, trustee Boston car trust, says that there is due him from the receiver of said railroad the sum of five thousand dollars and — cents, with interest thereon, to be computed on the several items as hereinafter stated, upon account for rental of trucks described in said car trust and for damages to trucks not described and trucks destroyed since January 1st, 1885, furnished by him to the receivers of said railroad at their special instance and request.

38 Said George William Ballou, trustee, further states that the payment for each item of said account hereto annexed was due in each month after the date it was furnished, as specified in said account, and interest is due on each item after due.

GEORGE WILLIAM BALLOU, *Trustee*,
By E. R. CHAPMAN AND
JAMES IRWIN, *His Att'ys.*

And afterwards, to wit, at the November term of said court, on the 21st day of December, 1888, before the Honorable William A. Woods, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now William P. Fishback, Esq., master in chancery, and files his report and schedule marked "A," and evidence upon the intervening petition of George William Ballou as to car rentals, which report is in the words following, to wit:

To the honorable court:

The undersigned, the master in chancery to whom was referred the above petition, with other petitions of like character, by order of the court made herein June 18, 1885, and referring to his report on the petitions of other intervenors filed herein December 7, 1885, now respectfully reports as follows:

By said order of June 18, 1885, I was required to ascertain and report what rentals are owing to the owners of cars and locomotives for the use of the same by the receivers of this court from August 1, 1883, to January 1, 1885. I was also required to report what amounts were due said owners on account of repairs to their cars and locomotives according to the reports and inspections made under the order of this court dated December 1, 1884.

39 Said order also required me to ascertain and report the rentals due the owners of such cars and locomotives for the period of six months prior to August 1, 1883; also to report the value of such cars as have been destroyed since the first of August, 1883.

By subsequent orders of this court all claims for rentals of cars and locomotives which accrued prior to August 1, 1883, have been disallowed.

The present report embraces only such cars as are included in

what are known as the Ballou and Holmes leases and included in series A, B, C, D, and E of the Boston car trust. On hearing of exceptions to the report filed December 7, 1885, the court ordered and directed that the monthly rentals or cars and locomotives covered by the schedules filed with said report should be reduced fifteen per cent., and this report and the schedules accompanying it hereafter mentioned conform to said rule.

As to the computation of the amounts due, the master has resorted to the same methods set forth at length in said report filed December 7, 1885, which is referred to and made part hereof, so far as the same states the manner in which the computations were made—that is, the same sources of evidence were resorted to and the same character of stipulations were made, the only difference being that in this report the fifteen per cent. reduction is made. The amount of rentals ascertained in the way above indicated is distributed under the following periods:

1. Rentals of locomotives and cars in the possession of the receiver for the twelve months, being from August 1, 1883, to August 1, 1884.

2. Rentals of locomotives and cars in the possession of the receiver for the five months from August 1, 1884, to January
40 1, 1885.

3. The computation of the value of repairs upon the several locomotives and cars in the possession of the receiver for the seventeen months from August 1, 1883, to January 1, 1885, as per the average of the cars reported.

4. Computation of the value of the cars destroyed while in the possession of the receiver from August 1, 1883, to January 1, 1885.

I file herewith and make a part of this report Schedule A, of seven sheets, all of which are properly paged and bound together.

Sheet No. 1 shows the total net rentals of the cars and locomotives which are covered by the Ballou and Holmes leases for the twelve months from August 1, 1883, to August 1, 1884, less the fifteen per cent. reduction, which would be $60,173.70.

Sheet No. 2 shows the rentals to be deducted from gross rentals in respect of cars destroyed between August 1, 1883, and January 1, 1885, amounting to $473.20.

Sheet No. 3 shows the computation of the rentals for locomotives and cars in the possession of the receiver for five months, being from August 1, 1884, to January 1, 1885, less the fifteen per cent. reduction, to be $24,889.40.

Sheet No. 4 shows the computed value of repairs upon the locomotives and cars during the seventeen months from August 1, 1883, to January 1, 1885, to be $8,387.18, of which sum the sum of $5,920.37 is chargeable to the twelve months of said period and the sum of $2,466.81 to the five months' period.

Sheet No. 5 shows the value of cars destroyed from August 1, 1883, to August 1, 1884, to be $3,620.00 and for the period from August 1, 1884, to January 1, '85, $250.00.

41 Sheet No. 6 contains a summary of the distribution of the rentals, repairs, and value of cars destroyed for the twelve

months, being from August 1, 1883, to August 1, 1884, the total of the summary being $69,714.07. Of this amount $37,053.03 have heretofore been reported to be paid by the Ohio Divisions, said report having been made under an order of reference made by the circuit court of the southern district of Ohio, western division, leaving for distribution among what are known as the Toledo Terminal, the Toledo Division, and the St. Louis Division the sum of $32,661.04, which, upon the basis of percentages heretofore settled by this court, makes the amount due and owing to said intervenors from—

The Toledo Terminal, .41 per cent.	-------	278 85
The Toledo Division, 23.79 "	-------	16,584 98
The St. Louis Division, 22.66 "	-------	15,797 22

Which sums I report and find should be paid to the intervenors out of the fund in court prior to any distribution of proceeds of sale to the holders of the bonds secured by the mortgage or deed of trust foreclosed herein.

Sheet No. 7 contains a summary of the distribution of rentals, repairs, and value of cars destroyed for the five months, being from August 1, 1884, to January 1, 1885, the total amount to be distributed being $27,606.21, which is distributed as follows:

To the Toledo Terminal, .85 per cent.	-----	234 65
To the Toledo Division, 50.78 "	----	14,018 43
To St. Louis Division, 48.37 "	----	13,333 13

Which amounts I report and find should be paid by said divisions in the proportions above indicated prior to payment of any of the bonds secured by the mortgages and deeds of trust foreclosed herein.

42 The same sheet contains a summary of the amounts due from the three divisions above named for the whole period of seventeen months, as per sheets 6 and 7, showing the same to be $60,267.25.

Respectfully submitted,

W. P. FISHBACK,
Master in Chancery.

SCHEDULE "A."

Ballou and Holmes Trust.

Computations of rentals of locomotives and cars in the possession of the receiver for twelve months, being from August 1st, 1883, to August 1st, 1884.

No.	43 Class.	Builder or owner.	Series.	Gross rentals.	Less amount for cars destroyed.	Net rentals.
6	Locomotives	Mason	A	8,280 00	8,280 00	
10	Box cars	Pennock Bros.	"	600 00	600 00	
78	Flat cars	Small & Co. & Barney & Smith.	"	3,276 00		
	(Less for car #311,	destroyed. See sheet 2.)		34 40	3,241 60	
125	Transfer trucks		"			1,875 00
6	Locomotives	Hinckley	B	8,280 00	8,280 00	
99	Flat cars	Barney & Smith & U. S. R. S. Co.	"	4,158 00		
	(Less for car #458,	destroyed. See sheet 2.)		1 75	4,156 25	
4	Locomotives	Porter, Bell & Co.	C	5,520 00	5,520 00	
7	Pass. coaches	J. G. Brill & Co.	"	3,024 00	3,024 00	
5	" "	" "	"	2,160 00	2,160 00	
4	Bgge., mail, & exp.	" "	"	864 00	864 00	
2	Comb. pass. & mail	" "	"	864 00	864 00	
23	Box cars	Middleton Car Works.	"	1,380 00		
	(Less for cars #712,	20, & 25, destroyed. See sheet 2.)		136 17	1,243 83	
24	Coal cars	U. S. R. S. Co.	"	1,296 00	1,296 00	
98	Flat cars	Middleton Car Works.	D	3,906 00		
	(Less for 6 cars de	stroyed. See sheet 2)		49 33	3,856 67	
163	Box cars	Middleton Car Works.	"	9,780 00		
	(Less for 6 cars de	stroyed. See sheet 2)		226 65	9,553 35	
4	Locomotives	Baldwin	E	5,520 00	5,520 00	
2	"	Brooks	"	2,760 00	2,760 00	
98	Coal cars	Barney & Smith	"	5,292 00	5,292 00	
35	Box cars	" "	"	2,100 00		
	(Less for car #1015,	destroyed. See sheet 2.)		25 00	2,075 00	
					68,586 70	
	Less 15 % reduc	tion			10,288 00	
						58,298 70
	Total net rentals					$60,173 70

W. P. FISHBACK, *Master.*

Computed rentals to be deducted from gross rentals in respect of cars destroyed between August 1st, 1883, and January 1st, 1885.

No. of car.	Class.	Series.	Date when destroyed.	Computed amount August 1, 1883, to Aug. 1st, 1884.	Total for each series.
311	Flat car	A	Oct. 6, 1883	34 40	34 40
*					
458	"	B	July, 1884	1 75	1 75
506	"	D	June 26, 1884	3 95	
518	"	"	Dec. 1, 1883	28 00	
531	"	"	June 19, 1884	4 78	
532	"	"	July, 1884	1 75	
545	"	"	"	1 75	
571	"	"	May 12, 1884	9 10	
					49 33
712	Box car	C	Sept. 23, 1883	51 17	
720	"	"	Nov. 1, 1883	45 00	
725	"	"	Nov. 27, 1883	40 00	
					136 17
749	Box car	D	Aug. 25, 1883	30 00	
770	"	"	Nov. 27, 1883	40 00	
809	"	"	Oct. 30, 1883	45 00	
863	"	"	Aug. 25, 1883	30 00	
881	"	"	Oct. 20, 1883	41 65	
911	"	"	Nov. 30, 1883	40 00	
					226 65
1013	Box car	E	Aug. 14, 1884		
1015	"	"	Feb'y 29, 1884	25 00	25 00
					$473 30

W. P. FISHBACK, *Master.*

Computation of rentals of locomotives and cars in the possession of the receiver for 5 months, being from August 1st, 1884, to January 1st, 1885.

No.	Class.	Builder or owner.	Series.	Gross rentals for 5 months.	Net rentals.
6	Locomotives	Mason	A	3,450 00	
10	Box cars	Pennock Bros.	"	250 00	
77	Flat cars	Small & Co. & Barney & Smith.	"	1,247 50	
125	Transfer trucks		"	"	781 25
6	Locomotives	Hinckley	B	3,450 00	
98	Flat cars	Barney & Smith & U. S. R. S. Co.	"	1,715 00	
4	Locomotives	Porter, Bell & Co.	C	2,300 00	
7	Pass. coaches	J. G. Brill & Co.	"	1,260 00	
5	" "	" "	"	900 00	
4	Bgge., mail, & exp.	" "	"	360 00	
2	Comb. pass. & mail	" "	"	360 00	
20	Box cars	Middleton Car Works	"	500 00	
24	Coal cars	U. S. R. S. Co.	"	540 00	
87	Flat cars	Middleton Car Works	D	1,522 50	
157	Box cars	" "	"	3,925 00	
4	Locomotives	Baldwin	E	2,300 00	
2	"	Brooks	"	1,150 00	
98	Coal cars	Barney & Smith	"	2,205 00	
	Add'l for $1013 from 1st Aug., 1884			2 50	
	" 14 " "				
33	Box cars	Barney & Smith	E	825 00	
				$28,362 50	
	Less 15% reduction			4,254 35	
					24,108 15
	Total net rentals				$24,889 40

W. P. FISHBACK, *Master.*

46 *Ballou and Holmes Trust.*

Computed value of repairs upon the several locomotives and cars in the possession of the receiver for 17 months from Aug. 1st, 1883, to Jan'y 1st, 1885, as per the average of cars, &c., reported.

No.	Class.	Series.	Amount for 17 months.	Amount for 12 months.	Amount for 5 months.
6	Locomotives	A	1,327 50	937 06	390 44
10	Box cars	"	47 50	33 53	13 97
77	Flat cars	"	351 12	247 85	103 27
6	Locomotives	B	1,327 50	937 06	390 44
98	Flat cars	"	446 88	315 44	131 44
4	Locomotives	C	885 00	624 71	260 29
7	Pass. coaches	"	343 00	242 12	100 88
5	"	"	245 00	172 94	72 06
4	Bgge., mail, & exp.	"	145 00	102 35	42 65
2	Comb. pass. & mail	"	98 00	69 18	28 82
20	Box cars	"	95 00	67 06	27 94
24	Coal cars	"	88 32	62 34	25 98
87	Flat cars	D	396 72	280 04	116 68
157	Box cars	"	745 75	526 41	219 34
4	Locomotives	E	885 00	624 71	260 29
2	"	"	442 50	312 35	130 15
98	Coal cars	"	360 64	254 57	106 07
33	Box cars	"	156 75	110 65	46 10
			$8,387 18	5,920 37	2,466 81

W. P. FISHBACK, *Master.*

47 *Ballou and Holmes Trust.*

Computed value of cars destroyed while in the possession of the receiver, from Aug. 1, 1883, to January 1, 1885.

No. of car.	Class.	Date when destroyed.	Series.	August 1, 1883, — August 1, 1884.	August 1, 1884, to Jan'y 1, 1885.
311	Flat car	Oct. 6, 1883	A	140 00	
458	Flat car	July 15, 1884	B	140 00	
712	Box car	Sept. 23, 1883	C	250 00	
720	"	Nov. 1, 1883	"	250 00	
725	"	" 27, "	"	250 00	
506	Flat car	June 26, 1884	D	140 00	
518	"	December 1, 1883	"	140 00	
531	"	June 19, 1884	"	140 00	
532	"	July 15, "	"	140 00	
545	"	" "	"	140 00	
571	"	May 12, "	"	140 00	
749	Box car	Aug. 25, 1883	D	250 00	
770	"	Nov. 27, "	"	250 00	
809	"	Oct. 30, "	"	250 00	
868	"	Aug. 25, "	"	250 00	
881	"	Oct. 20, "	"	250 00	
911	"	Nov. 30, "	"	250 00	
1013	Box car	Aug. 14, 1884	E	"	250 00
1015		Feb'y 29, 1884	"	250 00	
				$3,620 00	250 00

W. P. FISHBACK, *Master.*

48 *Ballou and Holmes Trust.*

Summary and distribution of rentals, repairs, and value of cars destroyed for 12 months, being from August 1st, 1883, to August 1st, 1884.

Summary.

Rentals	Sheet 1	60,173 70	
Repairs	" 4	5,920 37	
Cars destroyed	" 5	3,620 00	
			$69,714 07

Distribution.

	Per cent.	Computed amount.	Total.
Divisions liable thereto:			
Toledo Terminal	40	278 85	
Toledo Division	23.79	16,584 98	
St. Louis Division	22.66	15,797 21	
	46.85		$32,661 04
Divisions not liable therefor:			
Dayton Division	12.98	9,048 89	
Dayton & S. E. Division	32.67	22,775 59	
Iron R. R. "	1.98	1,380 34	
Cincinnati "	1.36	948 11	
Cin. Northern "	4.16	2,900 10	
	53.15		$37,053 03
			$69,714 07

W. P. FISHBACK, *Master.*

49 *Ballou and Holmes Trust.*

Summary and distribution of rentals and repairs and value of cars destroyed for 5 months, being from August 1, 1884, to January 1, 1885.

Summary.

Rentals	Sheet 3	24,889 40	
Repairs	" 4	2,466 81	
Cars destroyed	" 5	250 00	
			$27,606 21

Distribution.

	Per cent.	Computed amount.	Total.
Divisions liable thereto:			
Toledo Terminal	.85	234 65	
Toledo Division	50.78	14,018 43	
St. Louis "	48.37	13,353 13	
	100.00		$27,606 21

Summary of Amounts Due for the Periods of Twelve Months and Five Months.

Toledo Terminal (12 months), as per sheet	6	278 85		
" (5 mos.) "	7	284 65		
			513 50	
Toledo Division, 12 months,	6	16,584 98		
" 5 "	7	14,018 43		
			30,603 41	
St. Louis " 12 "	6	15,797 21		
" " 5 "	7	13,353 13		
			29,150 34	
Total amount due from the 3 divisions for the period of 17 months, as per sheets 6 & 7.				$60,267 25

W. P. FISHBACK, *Master.*

50 And afterwards, to wit, at the November term of said court, on the 9th day of November, 1889, before the Honorable Walter Q. Gresham, judge of said court as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

This day comes Sylvester H. Kneeland, as purchaser of the divisions known as the Toledo Division and the St. Louis Division of the railroad of The Toledo, Cincinnati and St. Louis Railroad Company, one of the defendants in the above-entitled causes, under the decrees of foreclosure heretofore rendered in said causes, and also as one of the first-mortgage bondholders of said company, for himself and all others in like interest, and prays leave to file his exceptions to the report of William P. Fishback, master, on the intervening petition of George William Ballou, trustee, in the above-entitled causes, which report was filed herein December 21, 1888, and leave is granted to the said Kneeland to file such exceptions accordingly, and the same are this day filed, and said exceptions are in the words following, to wit:

Now comes Sylvester H. Kneeland, purchaser of the railroad, property, rights, and franchises sold at foreclosure sale under decrees rendered in the above-entitled causes and owner of and trustee for a vast majority of the bonds secured by the mortgages foreclosed in the above causes, and now, by leave of court for that purpose first obtained, files his exceptions to said report and excepts to each and every of the master's findings and report herein, and for exceptions assigns the following causes:

I. Because the rental of cars and locomotives and the value of cars lost and destroyed between August 1st, 1883, and
51 December 1st, 1883, are found and included by said master in the allowance for the rental of cars and locomotives and the value of lost and destroyed cars from the first day of December, 1883, to the first day of January, 1885, whereas until the first day of December, 1883, there was no receivership of said property in behalf of said mortgage trustee and said bondholders, but the said receivership known as the "Dwight receivership" was and is a receivership based wholly and solely upon a creditor's bill, to which

bill said trustee and said bondholders were not nor was any or either of them nor the representative of either of them parties; and this exceptor says that no part of the rent for cars and locomotives and no claim whatever for cars destroyed during said period from August first, 1883, to December first, 1883, is or in equity can be held to be a lien upon said mortgaged property or the proceeds of sale thereof prior and superior in equity to the lien of the mortgage bonds secured by the mortgages executed by said railroad company to said trustee, the Central Trust Company of New York.

II. Said exceptor here now makes the same exception as last above set forth with regard to claims for repairs to cars and locomotives. Said exceptor avers that no claim whatever for repairs to cars or locomotives during the said period from August first, 1883, to December first, 1883, is or in equity can be held to be a lien prior and superior to the lien of the said mortgage bonds secured by mortgages executed by said railroad company to the said Central Trust Company of New York either upon said mortgaged property or upon the proceeds of sale thereof.

III. Because the computations in said report are erroneous, incorrect, and inequitable as against the divisions of the road
52 sought to be charged and forming the line from Toledo to East St. Louis.

IV. Because the said findings and computations are erroneous and not in accordance with the orders and decrees of the court in that behalf rendered and entered, and particularly are not in conformity with the principles and rules established by the joint decrees of the United States circuit courts for the sixth and seventh circuits made by Judges Jackson and Gresham, sitting together.

V. Because the orders and decrees under which the said master has made and filed his said report of December 21, 1888, are contrary to law and equity.

VI. Because said master in making up his findings and computations under said orders and decrees has wholly ignored the mileage basis as a basis for computation for rentals, whereas the said master should have inquired into and considered or made the basis of his computations the mileage basis for rental for equipment, which would, if it had been adopted and accepted by said master, have lowered and decreased said rentals from one-third to one-half of the sums found by said master in said report.

VII. Because the findings of the master in said report are all made upon the basis of a single continuous receivership from August first, 1883, to January 1st, 1885, whereas in truth and in fact said master should have reported and found that there was no receivership in behalf of said mortgage trustee nor said bondholders until the first day of December, 1883, and should have made his reports and findings upon a basis of a receivership only from December first, 1883, to January first, 1885.

VIII. Because the master has found and reported that there are large sums due from the Toledo and St. Louis Divisions of
53 said railroad for rents and repairs of cars and locomotives and for cars destroyed, to wit, from the Toledo Division

thirty thousand six hundred and three and $\frac{41}{100}$ dollars ($30,603.41) and from the St. Louis Division twenty-nine thousand one hundred and fifty and $\frac{35}{100}$ dollars ($29,150.35), whereas said master should have reported that nothing whatever is due from said divisions or either of them or from the line of said railroad from Toledo to East St. Louis for rentals or repairs or for cars destroyed in preference to payment of the mortgage bonds, because the pleadings, reports, and records of these causes prove incontestably that the use of said cars added nothing whatever to the mortgaged estate, and that there were no net earnings as a result of the receiverships or either of them, but that, on the contrary, the use of such cars caused a loss each day the same were used or retained.

IX. Because said master reports a distribution of said alleged indebtedness for car rentals and repairs and for cars destroyed, which distribution is inequitable, unjust, and erroneous, inasmuch as the master should have found and reported that no part of said indebtedness is due from or a lien upon either of said divisions of said railroad forming the line from Toledo to East St. Louis.

X. Because the master should, upon the pleadings and evidence, have found and reported that the alleged owner of said cars and equipment well knew at the time said alleged claim for rents reported upon by the master accrued, and at the time said equipment was delivered to said railroad company, and at the time the same was left in the possession of said receivers that said railroad company was absolutely and hopelessly bankrupt, and that the mortgaged property was grossly insufficient to pay the mortgage
54 debt, and that there was and could be no net earnings arising from the operation of said railroad, and that the use of said cars and equipment was daily increasing the indebtedness of said railroad company and of said receivers instead of adding anything whatever to the value of the mortgaged estate, and that said alleged owner of said cars and equipment, knowing all these facts, left *their* said equipment in the possession and use of the railroad and its receivers without making any demand therefor.

XI. Because the master reports as due to said George William Ballou, trustee, a large sum of money for the use and rent of cars and locomotives and for cars destroyed upon lines of railway not included in the foreclosure proceedings in the above-entitled causes and not within the jurisdiction of this court, whereas the master should have found and reported solely the rents and damages, if any, due to petitioner from the line of railway involved in the causes above entitled and none other, to the end that rentals should not be paid on cars not used and on cars used only to the extent of such use.

Wherefore exceptor now prays that the report of the master as to the claim of George William Ballou, trustee, filed December 21, 1888, may be set aside and disaffirmed and the exceptor's exceptions thereto may be sustained, and that the court will enter a decree that no sum whatever is due and payable from either of said divisions or the proceeds of the sale thereof for the rentals of or repairs to cars or for cars destroyed to said intervening petitioner.

And exceptor will ever pray, &c.
November 9th, 1889.

R. G. INGERSOLL,
JOHN M. BUTLER,
CLARENCE BROWN,
Solicitors for S. H. Kneeland.

55 And thereupon came on for hearing the exceptions so filed by the said Kneeland to the report of said master on the intervening petition of said Ballou and the exceptions filed by the said Kneeland to the report of said master, filed herein on the 18th day of April, 1889, upon the intervening petition of the Railroad Equipment Company concerning the equipment lease known as the Cincinnati Northern Railway Company lease, and the court having fully considered the said reports of the said master and the exceptions of the said Kneeland thereto and the arguments of counsel for the respective parties in interest, and being now fully advised in the premises, it is ordered that the exceptions so filed by the said Kneeland be, and the same are hereby, overruled, and said reports be, and they are hereby, in all things ratified, approved, and confirmed.

And the court doth find from said reports of the said master and from the testimony and exhibits accompanying the same that there is due to the said George William Ballou, trustee, for rentals and repairs of cars and locomotives and for cars destroyed for the period of twelve months from August 1st, 1883, to August 1st, 1884, from the divisions of said railroad known as the "Toledo Division" and "St. Louis Division" the following amounts:

From the Toledo Division	$16,584 98
From the St. Louis Division	15,797 22

Making the aggregate sum of thirty-two thousand three hundred eighty-two dollars and twenty cents ($32,382.20) due to the said petitioner from said divisions for the period above named.

The court doth further find that there is due to the said George William Ballou, trustee, for rentals and repairs of cars and locomotives and for cars destroyed for the period of five months
56 from August 1st, 1884, to January 1st, 1885, from the divisions of said railroad known as the "Toledo Division" and "St. Louis Division" the following amounts:

From the Toledo Division	$14,018 43
From the St. Louis Division	13,353 13

Making an aggregate sum of twenty-seven thousand three hundred seventy-one dollars and fifty-six cents ($27,371.56) due to the said petitioner from said divisions for the period last above named, making an aggregate of fifty-nine thousand seven hundred fifty-three dollars and seventy-six cents ($59,753.76) due to the said petioner, George William Ballou, trustee, on account of such rentals, repairs, and cars destroyed from the said two divisions of said railroad for the period from August 1st, 1883, to January 1st, 1885.

The court doth further find that there is due to the Railroad Equipment Company for rental and repairs of cars and locomotives embraced in the equipment lease known as the Cincinnati Northern Railway Company lease for the period of twelve months from August 1st, 1883, to August 1st, 1884, from the divisions of said railroad known as the "Toledo Division" and "St. Louis Division" the following amounts:

From the Toledo Division	$2,366 94
From the St. Louis Division	2,254 51

Making an aggregate sum of four thousand six hundred twenty-one dollars and forty-five cents ($4,621.45) due to the said Railroad Equipment Company from said divisions for the period first above named.

The court doth further find that there is due to the said Railroad Equipment Company for rentals and repairs of cars and locomotives for the period from August 1st, 1884, to January 1st, 1885, from the divisions of said railroad known as the "Toledo Division" and "St. Louis Division" the following amounts:

57

From the Toledo Division	$810 16
From the St. Louis Division	771 71

Making an aggregate sum of one thousand five hundred eighty-one dollars and eighty-seven cents ($1,581.87) due to the said Railroad Equipment Company from the said divisions of said railroad for the period last above named, making an aggregate sum of six thousand two hundred three dollars and thirty-two cents ($6,203.32) due to the said petitioner, The Railroad Equipment Company, on account of such rentals and repairs from the said two divisions of said railroad for the period from August 1st, 1883, to January 1st, 1885.

The court doth thereupon order, adjudge, and decree that the said George William Ballou, trustee, do have and recover the said sum of fifty-nine thousand seven hundred and fifty-three — and seventy-six cents ($59,733.76), and that the said Railroad Equipment Company do have and recover the said sum of six thousand two hundred three dollars and thirty-two cents ($6,203.32), being the amounts so found due to them respectively, as above set forth, with interest thereon, at the rate of six per centum per annum, from the date hereof, which said sums respectively are hereby ordered, adjudged, and decreed to be a prior and paramount lien upon all the railroad, property, and effects of every nature and kind pertaining to each of said divisions respectively and prior to the rights and interest of the bondholders and purchaser thereof and of all persons claiming by, through, or under them or either of them, which said sums shall be paid out of the proceeds of the foreclosure sale of said divisions prior to any distribution of such proceeds among the holders of the bonds secured by the mortgages thereon.

It is further ordered, adjudged, and decreed that the said
58 Sylvester H. Kneeland, the purchaser of each of said divisions of said railroad at the foreclosure sale thereof heretofore had

pursuant to the decrees of this court, do within twenty days hereof pay into the registry of this court or to the said petitioners respectively or to their solicitors herein the amounts so adjudged to each of said petitioners respectively, as above set forth, such payment to be made in cash as a part of the purchase price due from the said Kneeland upon the sale of said divisions in accordance with the decrees of foreclosure heretofore entered in said causes, the court reserving the right, in the event of default in such payment as aforesaid, to resume possession of the property of said railroad company so sold to the said Kneeland on the terms mentioned in the order confirming such sale and approving the conveyance of such property to the said Kneeland.

From which decree the said Sylvester H. Kneeland, as such purchaser and bondholder, prays an appeal to the Supreme Court of the United States, which is granted, to operate as a supersedeas, upon giving bond, with surety, to be approved by the court, in the sum of twelve thousand dollars ($12,000.00) for the use and benefit of said George William Ballou, trustee, and in the sum of two thousand dollars ($2,000.00) for the use and benefit of the said Railroad Equipment Company.

And thereupon it is stipulated in open court by counsel for the respective parties that if the said Kneeland shall perfect either of said appeals and shall file a transcript of record thereon in the Supreme Court of the United States upon the hearing of such appeals in said Supreme Court either party thereto shall be at liberty to use so much of the transcript of the record as he may deem material in the cause of Sylvester H. Kneeland, appellant, against The American Loan and Trust Company of Boston and others,
59 appellees, now pending on appeal in said Supreme Court and numbered 252 of the October term, A. D. 1889, of said court, and for that purpose such portions of the transcript of record in said cause numbered 252 shall be taken and considered as part of the evidence introduced upon the hearing before the master in this cause.

And thereupon came on for final hearing the exceptions of the Railroad Equipment Company to the report of William P. Fishback, master, filed herein on the 18th day of April, 1889, concerning the equipment embraced in the lease known as the Clark, Post and Martin lease, executed between the Toledo, Delphos and Burlington Railroad Company and the firm of Clark, Post and Martin, bearing date August 18th, 1879; and the court having fully considered said report and the exceptions thereto and having heard the arguments of counsel for the respective parties thereon and being now fully advised in the premises, it is ordered that such exceptions be, and they are hereby, overruled, and that said report be, and the same is hereby, in all things ratified, confirmed, and approved.

The court doth thereupon order, adjudge, and decree that the said petition of the Railroad Equipment Company, successor to the firm of Clark, Post and Martin, as to the equipment embraced in

said car-trust lease last above described, be, and the same is hereby, dismissed, for want of equity, at the cost of petitioner.

From which decree dismissing said petition the said Railroad Equipment Company prays an appeal to the Supreme Court of the United States, which is allowed upon the filing of a bond herein, with good and sufficient surety, to be approved by the court, in the sum of five hundred dollars ($500.00).

And the court allows W. P. Fishback two hundred and fifty dollars ($250.00), to be paid by the Railroad Equipment
60 Company, for his services as master in the matter of the Clark, Post and Martin lease, and the further sum of five hundred dollars ($500.00) for his services in the matter of the Ballou and Holmes and the Cincinnati Northern leases, which last-named sum is allowed against Sylvester Kneeland, the purchaser of the main line.

And afterwards, to wit, at the November term of said court, on the 30th day of November, 1889, before the Honorable William A. Woods, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Sylvester H. Kneeland and files his bond on appeal from the decree of said court entered in said cause on the 9th day of November, 1889, in favor of Geo. Wm. Ballou in the sum of twelve thousand dollars ($12,000.00), with the American Surety Company as surety thereon, and said bond is now by the court approved, and said bond is in the words and figures following, to wit:

Whereas the circuit court of the United States for the district of Indiana in the above-entitled causes heretofore rendered and entered certain decrees of foreclosure upon certain mortgages and trust deeds executed by the Toledo, Delphos & Burlington Railroad Company to the Central Trust Company of New York and by the Toledo, Cincinnati & St. Louis Railroad Company of Indiana and Illinois to the said Central Trust Company of New York and Thomas A. Hendricks;

And whereas, under certain orders of sale issued by said court upon said foreclosure decrees, William P. Fishback and John McNulta, as special masters appointed by the court, did, on the thirtieth day of December, 1885, at the city of Indianapolis, Indiana, sell at public auction to Sylvester H. Kneeland, of the city,
61 county, and State of New York, the entire railroad and property covered by and described in said mortgages and deeds of trust;

And whereas on the ninth day of November, 1889, the said circuit court of the United States for the district of Indiana in said above-entitled causes rendered and entered a certain decree ordering and decreeing that Sylvester H. Kneeland, as purchaser at said sale and as trustee and owner of a large majority of all the first-mortgage bonds mentioned in said mortgages or trust deeds foreclosed in said above-entitled causes, do pay within twenty days from the date of said decree into the registry of said court or to the petitioner, George William Ballou, the sum of fifty-nine thousand seven

hundred and fifty-three and $\frac{76}{100}$ dollars ($59,753.76), with interest, at the rate of six per centum per annum, from November 9th, 1889;

And whereas said Sylvester H. Kneeland, as such purchaser and as the owner of and trustee for said first-mortgage bonds, as hereinabove set forth, has prayed an appeal from said decree, which appeal has been by the court granted:

Now, therefore, know all men by these presents that we, Sylvester H. Kneeland, of the city, county, and State of New York, as principal, and the American Surety Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York, having an office and principal place of business at No. 160 Broadway, in the city of New York, as surety, are held and firmly bound unto Noble C. Butler, clerk of the circuit court for said district of Indiana, in the sum of twelve thousand dollars ($12,000) to and for the use and benefit of George William Ballou, trustee, to be paid to the said Noble C. Butler, clerk, his successors or assigns; for the payment well and truly to be made the said Sylvester H.
Kneeland and the American Surety Company bind them-
62 selves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 26th day of November, 1889.

Whereas the above-named Sylvester H. Kneeland has taken an appeal to the Supreme Court of the United States from the circuit court of the United States for the district of Indiana to reverse the said decree rendered in the above-entitled actions by the said circuit court of the United States for the district of Indiana:

Now, therefore, the condition of this obligation is such that if the above-named Sylvester H. Kneeland shall prosecute his said appeal to effect and answer all costs and damages if he shall fail to make good his appeal, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

SYLVESTER H. KNEELAND. [L. S.]
AMERICAN SURETY COMPANY OF NEW YORK,
[L. S.] By HENRY D. LYMAN, *Vice-President.*
FRED. F. NUGENT, *Secretary.*

Approved.
W. Q. GRESHAM.

Signed, sealed, and delivered in presence of—
H. G. HINTON.

CITY, COUNTY, AND STATE OF NEW YORK, ss:

On this 26th day of November, 1889, before me personally appeared the within-named Sylvester H. Kneeland, to me known and known to me to be the individual described in and who executed the within bond, and duly acknowledged that he executed the same as his free act and deed for the purposes therein mentioned.

H. G. HINTON,
Notary Public, Kings County, N. Y.

Certf. filed in N. Y. Co.

63 CITY, COUNTY, AND STATE OF NEW YORK, ss:

On this 26th day of November, 1889, before me personally appeared Henry D. Lyman, vice-president, to me personally known, who, being by me duly sworn, said that he is the vice-president of the American Surety Company of New York; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he executed and signed said instrument as vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section three (3), chapter four hundred and eighty-six (486), of the Session Laws of 1881; and the said Henry D. Lyman further says that he is acquainted with Fred. F. Nugent and knows him to be the secretary of said company; that the signature of the said Fred. F. Nugent subscribed to the same instrument is in the handwriting of the said Fred. F. Nugent and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Henry D. Lyman, vice-president.

H. G. HINTON,
[L. S.] *Notary Public, Kings Co., N. Y.*

Certf. filed in N. Y. Co.

Here follows the testimony taken in said cause on the intervening petition of George William Ballou.

64 In the Matter of the Intervening Petition of GEO. WM. BALLOU, Trustee.

Proceedings Before Hon. Wm. P. Fishback, Special Master.

TUESDAY, *February 9th*, 1886.

Present: James Irvine, Esq., solicitor for intervening petitioner; C. W. Fairbanks, Esq., solicitor for bondholders and others.

C. A. BALL, a witness called on behalf of intervenor, being first duly sworn, testifies as follows:

Examined by JAMES IRVINE, Esq.:

Q. Mr. Ball, state your name, age, and residence.
A. C. A. Ball; age, 34; residence, Delphos, Ohio.
Q. State, Mr. Ball, whether or not you have been making any investigations in regard to a series of one hundred sets, two hundred in all, of trucks belonging to Boston car trust, series A.
A. I have.
Q. State at whose instance you made those investigations.
A. At the instance of—well, at your instance.
Q. I hand you here, Mr. Ball, some schedules which are now offered in evidence.

Mr. Fairbanks objected to the introduction of said schedules in evidence.

Said schedules were here admitted in evidence, marked Ball's Exhibit No. 1, 14 sheets.

Q. State when you made those investigations.

To which question Mr. Fairbanks objected.

Mr. IRVINE: I will state that I had the witness sit down
65 and write up and codify these schedules.

A. Well, the first record I made of these trucks in question was between April 4th and May 13th, 1885.

Question by the MASTER:

Q. The first what?

A. The first inspection or record. It wasn't an inspection, really, the first I went out to look after them. A record, you might say, between the dates of April 4th and May 13th, 1885. The second (a more complete record) was made between the dates of December 28th, 1885, and February 5, 1886.

Q. Now, take these schedules, or using any of these papers to refresh your memory, and you may state, in the first place, what did you ascertain about those trucks at the first investigation.

A. In the first inspection or first record that I made of the trucks I found at Canada Southern Junction, Toledo, trucks having numbers, 43 trucks in all; at Holgate, Ohio, 23 trucks.

Question by the MASTER:

Q. Are these sets or trucks?

A. These are trucks—single trucks: At Delphos, Ohio, 3; at Dayton, 11, and under cars on T., C. & St. L. railroad, 8. Now, of trucks having duplicate numbers: At Canada Southern Junction, Toledo, 5; at Holgate, 4; at Dayton, 2. Of trucks having no numbers: At Canada Southern Junction, Toledo, 8; at Holgate, 7; at Dayton, 3, and under cars on T., C. & St. L. railroad, 1. Now, I will state here that at the time of making this record I was not making a thorough search for all of the transfer trucks. I expected to take that matter up afterwards. At this time I was merely noting such
66 trucks as I could find at the principal transfer points where they store these trucks, and also such as I would notice under cars along the line of the road at such places as I had time to go out and look the cars over. I did this in a general way in connection with other car-trust matters that the car-trust people had employed me to look after, expecting that it would come up some time in the future, and that I would have something to start on.

Q. Now, coming to this last examination, Mr. Ball.

A. Now, between the dates of December 28th, 1885, and February 5th, 1886, I made another and more careful and complete record, taking note of all trucks which I supposed belonged in Boston car trust, series A, taking those that were marked with numbers, that were regular transfer trucks, and those which were not regular

transfer trucks, but were marked Boston car trust, series A, and which did not belong in any of the Boston car trust, series A, cars.

Q. Well, now, what did you find?

A. In this last I note as follows: Of the trucks having numbers, at Canada Southern Junction, Toledo, I found 31; at Holgate, Ohio, 20; at Delphos, 1; at Dayton, 7; under cars on T., C. & St. L. railroad, Dayton & Toledo railroad, and Dayton & Ironton railroad, 7. Of trucks having duplicate numbers I found at Canada Southern Junction, Toledo, 6; at Holgate, 3; at Dayton, 2; under cars on T., C. & St. L., D. & I., and D. & T. railroads, 5. Of trucks having no numbers I found at Canada Southern Junction, Toledo, 13; at Holgate, Ohio, 12; Dayton, 6; Cincinnati, 3; under cars on T., C. & St. L., D. & T., and D. & I. railroads, 26. Concerning this last lot or the latter record I have the following notes: In trucks having numbers one truck at Delphos is not a
67 transfer truck, but is marked Boston car trust, series A, number 2063, and is under car 5365. Of those at Dayton No. 2044 is short one pair of wheels and two oil-boxes; No. 2112 is all gone excepting the bolster; No. 2210 is not a transfer truck, but is marked B. C. T., series A, and is short all wheels, axles, and boxing. Of those under cars I find truck No. 2141 under car 844; truck No. 2156 under car 761; truck No. 2165 under car No. 897; truck No. 2182 under car No. 2497; truck 2144 under Dayton & Southeastern flat 95; truck 2153 under T., C. & St. L. flat No. 5382; truck 2146 under Dayton & Southeastern flat No. 95. The last three trucks—2144, 2146, and 2153—are not regular transfer trucks, but are numbered as above and marked B. C. T., series A. In trucks having duplicate numbers I note truck number 2181 is short all wheels, axles, and boxes. This is at Canada Southern Junction, Toledo. Of those at Dayton, Ohio, truck No. 2174 is short all wheels, axles, and boxes. Of those cars I note truck No. 2076 is under car 1049, is marked B. C. T., series A, but is not a regular transfer truck; truck 2142 is under car 812; truck 2141 is under car 5365, is marked Boston car trust, series A, but is not a regular transfer truck; truck 2145 is under car 451; truck 2153 is under car 4019. Both these cars are on the Shane's Crossing Branch, running off from the Dayton & Toledo railroad. In trucks having no numbers I note of those at Cincinnati two are marked B. C. T., series A; one truck has no wheels, axles, or boxes. Of those under cars I note under T., D. & B. 158 there is a truck marked Boston car trust, series A, that is not a transfer truck; under car T., D. & B. 157 there is two trucks marked Boston car trust, series A, which are not
68 transfer trucks; under car 969, on Shane's Crossing Branch, there are two regular transfer trucks.

Questions by Mr. FAIRBANKS:

Q. On Shane's Crossing Branch, you say?

A. Yes, sir.

Q. Upon the side track, stored?

A. Yes, sir; it is that four miles of track that runs down from Mercer to Shane's Crossing.

The WITNESS (continuing): Under car 2552, on Shane's Branch, there is one transfer truck; under car 5144, on Shane's Crossing Branch, there is one transfer truck; under car 1872, on Shane's Crossing Branch, there is one transfer truck; under car 471, on Shane's Crossing Branch, there is one transfer truck; under car 5382 there is a truck marked B. C. T., series A, that is not a transfer truck; under car 1049 there is one truck marked B. C. T., series A, not a transfer truck; under car 160 there is two trucks marked B. C. T., series A, which are not transfer trucks; under car 136 there is one truck marked B. C. T., series A, which is not a transfer truck; under car 232 there is two trucks marked Boston car trust, series A, which are not transfer trucks; under car 2889 there is one transfer truck; under car 136 there is one transfer truck; under car 847 there is one transfer truck; under car 3744 there is one truck marked B. C. T., series A, that is not a transfer truck; under car 2347 there is two trucks marked B. C. T., series A, which are not transfer trucks; under car 3742 there are two trucks marked B. C. T., series A, which are not transfer trucks; under car 2329 there are two trucks marked B. C. T., series A, which are not transfer trucks.

69 Q. Now, Mr. Ball, is all this that you have been testifying to set out in these schedules, pages 1 to 14?

A. Yes, sir.

Q. What do you mean by saying that there are trucks marked series A, Boston car trust, that are not regular transfer trucks? Explain that.

A. Well, I can only explain that by the way I understand it, of course.

Mr. FAIRBANKS: Have you any personal knowledge about it, Mr. Ball?

Q. How do you tell when a truck is a transfer truck?

A. Well, I tell it from my knowledge of the build of the trucks, having seen them so often, and the difference in the construction.

Q. Are there other transfer trucks in use on the road besides those belonging to Boston car trust, series A?

A. Yes, sir.

Q. How do you tell those other trucks from the trucks belonging to series A?

A. The difference in the build. The other trucks are built by the Barney & Smith Works in Dayton, and the regular transfer trucks in Boston car trust, series A, were built by Billmeyer and Small and the Midletown Car Works. I have, I think, a very fair knowledge of the trucks, because, in addition to looking up these trucks in Boston car trust, series A, I have been employed by the superintendent of the Dayton & Ironton & Dayton & Toledo to look up their trucks which belong to that road or belong to the Dayton & Southeastern or Dayton & Ironton road. I found quite a number of the other trucks.

70 Q. How long have you been connected with the Toledo, Cincinnati and St. Louis railroad?

A. Since July or June, 1878, I think.

Q. What branches of the operation of that railroad were — connected with, what did you do on that road, and what opportunity had you for becoming acquainted with these matters?

A. Well, I was first on a working train as conductor, and then I was appointed superintendent of the old division, known as the Delphos, Bluffton & Frankfort, from Mercer to Warren, and I held that position for about 21 months; then I became local agent at Bluffton, Indiana. From there I went to Mercer as superintendent of construction, under Mr. Craig, in building the Dayton connection, and was there probably nine months. From there I went onto a passenger train.

Q. In what capacity?

A. As conductor. I run that train about two years, and was appointed train-master and assistant to the division superintendent of the Toledo Division. I held that position three months, and again went back on a passenger train. I remained there about three months, and I was appointed superintendent of the Cincinnati and Cincinnati Northern Divisions, with headquarters at Cincinnati. I remained there about nine months, until after Mr. Craig resigned the receivership; then I again went over on the other part of the road, between Toledo and St. Louis, as a sort of assistant to Mr. Craig, looking up all outside work that he could not get out and attend to himself. During that time I was interested in car matters, looking after the inspections and sorting out and making record of such cars as Mr. Craig claimed under the division of cars of July 22nd, 1884. I remained in his employ until March,
71 1885, when I went with the car-trust people under Mr. Irvine. From that time on I have done not much of anything excepting strictly car business, making a record of the cars and selling them.

Q. Did I understand you to say that you found some trucks marked Boston car trust, series A, that are not transfer trucks?

A. Yes, sir.

Q. Have you noted all such on these schedules?

A. Yes, sir.

Q. Do I understand you to say that all the 142 trucks (that you give a summary of as trucks that you found), that they are all properly series A transfer trucks?

To which question counsel for respondent objected.

A. Well, of those 142 they are all of the Billmeyer & Small; that number, 142, is composed of trucks built by Billmeyer & Small and the Middletown Car Works, and such other trucks as were marked Boston car trust, series A, without regard to whether they were transfer trucks or not.

Q. How many of the 142 were not regular transfer trucks?

A. Well, I don't know without counting them up. I have already given them; it is simply a matter of counting them up.

Q. Can it be determined on those schedules?

A. Yes, sir.

Q. I will ask you what you learned at Canada Southern Junction and at Holgate about trucks being out on standard-gauge cars at the time you were there?

To which question counsel for respondent objected.

A. Well, in reference to that matter there is but two points now on any of the old Toledo, Cincinnati & St. Louis system where there is a transfer with standard-gauge roads and where it
72 is necessary to use transfer trucks—those points where they have a Ramsey transfer. These points are Canada Southern Junction and Holgate, and at the time of making a record of trucks at those two places——

Question by the MASTER:

Q. (Interrupting.) Which time do you mean—the last time?

A. The last time, I would say. I was informed by the man in charge of the transfers that standard-gauge cars were out on the Toledo, Cincinnati & St. Louis road as follows: 9 Canada Southern cars from Canada Southern Junction, and 5 Baltimore and Ohio cars from Holgate, making a total of 14 cars or transfer trucks.

Q. Could you learn how many of those trucks were series A trucks and how many were Dayton & Southeastern trucks?

A. I could not, but it is fair to suppose that——

Counsel for respondent objected to balance of this answer.

A. (Continuing.) Well, all of those trucks that are not marked Dayton & Southeastern and were not of Barney & Smith build belong to Boston car trust, series A, and those twenty-eight trucks are not included or mentioned in any of my schedules.

Question by the MASTER:

Q. Those schedules you are speaking of are the schedules you now hold in your honds?

A. Yes, sir.

Questions by Mr. IRVINE:

Q. What did you make those schedules 1 to 14 up from, Mr. Ball?

A. From actual observation of the trucks. I have seen every truck that is noted.

73 By the MASTER:

Q. Those designated Boston car trust, series A—were they the original ones that were on when they were first put in service, or was there anything to indicate that those designating marks had been changed?

A. Well, when those trucks came onto the road one of the builders—I don't remember which one—marked their trucks in duplicate—that is, two trucks of the same number. For instance, there would be two trucks numbered 2190.

Q. Making the set?

A. Putting them in sets. The other builders marked their trucks consecutively.

Q. That is, having two numbers to each set?

A. Yes, sir; having two numbers to each set. Some time after the trucks came onto the road they undertook to renumber them and get them between the extreme numbers given in the schedule of Boston car trust, series A, stuff. They marked quite a number of them and quite a number of them they didn't mark.

Q. Who had them marked?

A. The railroad company. Consequently there is now some of those trucks that are changed from the original number and some of them never have been changed and some duplicated, perhaps. My schedule speaks of trucks having duplicate numbers.

Q. Where those numbers were put on were the old ones preserved so they could be seen, or were they erased?

A. Well, I think on some of them—well, I don't know about that exactly. I don't know which trucks were marked in dupli-
74 cate. The reason I don't know which trucks were marked in duplicate (that is, which lot) there are some that are marked on the end of the sand board or bolster, and the figures are cut in with a die—stamped in. If these are the trucks that are marked in duplicate, why, of course, a new number should — on there, which I don't think is the case.

Cross-examination.

Questions by C. W. FAIRBANKS, Esq.:

Q. Will you take these schedules you have introduced, Mr. Ball, and show what truck numbers given there are the orignal numbers? Indicate also how many of them have been changed and when they were changed and by whom they were changed.

A. Well, I can't do that.

Question by the MASTER:

Q. Has there been any change in the designation Boston car trust, series A? I understand they all bear that in some shape.

A. Well, they all ought to bear that; some of them don't.

By Mr. FAIRBANKS:

Q. A large number of those trucks don't even bear the designation Boston car trust, series A?

A. That's it.

Q. Do you know when those were made?

A. I do not.

Q. Do you know by whom they were purchased?

A. I do not.

Q. Do you know when they were purchased?

A. No, sir.

Question by the MASTER:

Q. How do you know, then, that they are Boston car trust, series A, trucks?

75 A. Because they are of the same build trucks and have the same general appearance throughout as the trucks that are marked Boston car trust, series A.

Questions by Mr. FAIRBANKS:

Q. You say you made two examinations. Have you duplicated the trucks in those two different statements examined at those two different times? Have you noted here an explanation of any given set of trucks as having been examined twice?

A. Yes, sir.

Q. So, in a measure, these schedules are duplicate reports of a certain number of these trucks?

A. Well, it is really two separate reports.

Q. Two separate reports of the same trucks?

A. Of the same trucks.

Q. Well, what advantage is there in having the reports duplicated?

A. Well, as I said, at the time I made the first examination I didn't make a real careful examination.

Q. What kind of an examination did you make?

A. Well, I went to such places as is noted in the reports there—Canada Southern Junction, Holgate, Delphos, and Dayton—and on my way to and from those places I looked at trucks under standard-gauge cars that I examined along the line.

Q. That is, the first examination?

A. The first examination, and so far as that examination went it was done in a very careful manner.

Q. A large number of these trucks had never been used, had they?

A. Well, I think there is a good many that have not been

76 used since they were received on the road.

Q. They have just been standing around unused?

A. Standing around; yes, sir.

Q. About how many of them have been so unused?

A. Well, I should say 50 trucks of the whole lot.

Q. Have you any means of determining accurately the number that were unused?

A. No, sir.

Question by the MASTER:

Q. Did you mean, Mr. Ball, that they had not been used at all since they were delivered there?

A. I don't think they had been used at all, the way they were stored at Canada Southern Junction especially. There never was any time since the road was built when they needed all those transfer trucks.

Questions by Mr. FAIRBANKS:

Q. There were enough trucks in active use to meet the demand without taking these others?

A. Well, they were all there to be used the same as the others, but a man handling those cars would, of course, take the truck that was handiest to him. Consequently they didn't get out of those that were stored back.

Q. They had been standing there for months?

A. Yes, sir.

Q. Then, to repeat the question of the master, the trucks were not all needed?

A. The trucks were not all needed.

Q. There was a sufficient surplus, so that not more than fifty or sixty pairs of the trucks delivered were actually used?

A. No; there was more than that. There was seventy-five
77 per cent. Not used, you say?

Q. Not used.

A. About twenty-five per cent, not used.

Q. I notice in your schedules that you examined certain trucks on these two different occasions at the same point. For instance, truck number 2148, at Canada Southern Junction, April 2nd and December 30th, 1885. What does that indicate?

A. Those are the dates of the two examinations.

Q. And they hadn't been moved from that junction between those dates?

A. I don't know anything about that. I found them there on those two dates.

Q. I see a very large majority of these trucks you have inspected and indicated on your schedules appear to have been examined at the same point on the two different occasions.

A. Yes, sir.

Q. Now did that indicate to you whether they had been moved since the time you made the first examination?

A. No; that don't indicate anything of the kind. I couldn't tell whether those trucks were moved. Well, I can in a few cases, of course. I don't think there is any record kept of them. There may be at the transfer points, but I don't think there is a record of the kind and number of the trucks that go out under the standard-gauge cars.

Q. Both of these reports are indicated on each of these sheets, are they?

A. Yes, sir.

Q. And the first series of dates indicate the first examination?

78 A. Yes, sir; for instance, truck number 2114 I found at Canada Southern Junction on April 2nd and December 30th, 1885.

Q. We will begin with the other first—the first one on this sheet—truck 2112; that was at the Dayton shop April 21, 1885, and was there January 18th, 1886, "all gone but the bolsters." You don't know anything about the previous history of that set of trucks?

A. No, sir; that is one truck.
Q. Each of these numbers indicate one truck?
A. Yes, sir.
Q. Here is truck 2113 with no notation.
A. I don't find that.
Q. Where did you get number 2113?
A. Well, it was one of the numbers included in that series.
Q. Furnished by Mr. Irvine?
A. Yes, sir.
Q. Truck 2114, at Canada Southern Junction April 2nd; also December 30th, 1885; you don't know whether that had been moved?
A. Don't know whether that had been moved or not. I wish to say, in reference to making those schedules, I simply made them up for my own reference, excepting——
Q. (Interrupting.) Well, you made them up according to the best memoranda you had, didn't you?
A. Yes, sir; it seemed to suit Mr. Irvine.
Q. Now look at the first sheet exhibited here and state if every one of the trucks inspected by you at the different dates——
A. (Interrupting.) I wouldn't say "inspected."
Q. Examined. What do you mean by "examined?"
79 A. I looked at the truck, the build, make up, etc., and could determine what truck it was. For instance, truck 2136, I examined that truck by noting the car-trust series and number.
Q. Truck 2136, that you note at Dayton shops April 21st, 1885?
A. Yes, sir.
Q. Now, seven of the trucks examined by you on the fourth page of your exhibit were examined at the same point at two different times—that is to say, truck 2114 was examined at Canada Southern Junction April 2d and again December 30th, 1885?
A. How did you put that?
Q. I ask you if seven of the trucks were not inspected at Canada Southern Junction at both inspections?
A. No, sir.
Q. They were not?
A. No, sir.
Q. Now, where was 2114 inspected?
A. At Canada Southern Junction April the 2d and December 30th, 1885.
Q. That indicates that that truck was there at both of those dates?
A. Yes, sir.
Q. Truck 2115?
A. That was at Canada Southern Junction April 2nd only.
Q. You didn't find it there in December?
A. No, sir.
Q. 2116?
A. The same as 2115.
Q. And 2118?

A. The same as 2114.

80 Q. Now, did you examine both of those trucks at Canada Southern Junction at both of those dates?

A. I examined every truck I could find there.

Q. Now, truck 2120; that was at Holgate April 2nd, 1885. Did you make inspection of that on December 29th?

A. No, sir.

Q. Did you go over the road and try and make sufficient examination to find where it was?

A. No, sir.

Q. Did you make any attempt to find where it was?

A. Yes, sir; I made a sort of an attempt to hunt it up.

Q. What attempt did you make?

A. In passing over the road going to and from Holgate and Canada Southern Junction I examined as many of the standard-gauge cars as I could get at.

Q. Simply riding over on a train?

A. Riding over on a freight train—part of the time.

Q. When was that?

A. That was on December 29th.

Q. You say there was some of these trucks under standard-gauge cars west of Delphos?

A. I didn't go west of Delphos.

Q. How many?

A. I couldn't say. I can, too, I expect.

Q. Well, have you any information?

A. Only what I got from the transfer men.

Q. Now, I find from your statement to Mr. Irvine, at the time of your first examination, you examined forty-three trucks at Canada Southern Junction having numbers; at your second examination you examined thirty-one there?

A. That's it.

81 Q. Now, will you state how many of those bore the same numbers, if you can?

A. Duplicate numbers, you mean?

Q. How many, in short, were the same trucks?

A. Thirty-one.

Q. Thirty-one of the forty-three trucks were found at Canada Southern Junction at the second inspection?

A. Yes, sir.

Q. Now, take the trucks having numbers at Holgate. At your first inspection you found twenty-three there. Now, how many of those same trucks did you find at Holgate at the time of your second examination?

A. Twenty.

Q. At Delphos, first inspection, you found three. Now, how many of those same trucks, if any, did you find at the second inspection?

A. I didn't find any.

Q. How many trucks of any kind did you find at Delphos having numbers? You have reported one.

A. One, I think, is all I found. I found that under a car; it is not a transfer truck.

Q. Are there any trucks in Boston car trust, series A, that are not transfer trucks?

A. Yes, sir; as I understand it, there are some trucks that belong to series A that are not transfer trucks.

Q. How many are transfer trucks and how many are not, and what is the difference between them?

A. That can only be determined by footing up those schedules.

Whereupon, the hour of 12.30 p. m. having arived, the parties adjourned until 2 o'clock p. m.

82 TWO O'CLOCK P. M.

The parties met pursuant to adjournment.

Present: The same as before recess.

The cross-examination of C. A. BALL was resumed by Mr. FAIRBANKS as follows:

Q. What is the difference between a transfer truck and one that is not a transfer truck?

A. Well, it has no side bearings, principally. The side bearings on the bolster are wider than is necessary for an ordinary narrow-gauge car—that is, the side bearings of a narrow-gauge truck.

Q. Well, the trucks belonging to series A, and which you have noted as not transfer trucks, were used for what purpose?

A. Well, they were used under cars.

Q. In ordinary service on the road?

A. Yes, sir.

Q. Some of these trucks you say you found on Shane's Branch?

A. Yes, sir.

Q. Where is Shane's Branch?

A. Shane's Branch is a little piece of track four miles long, running from a point on the Dayton and Toledo road, known as Mercer, to Shane's Crossing.

Q. The Dayton and Toledo is what was formerly the Dayton Division of the narrow gauge?

A. Yes, sir.

Q. Well, you found quite a number of trucks there?

A. I did.

Q. To whom did they belong?

A. Well, they are of the same build as the other trucks that are in Boston car trust, series A.

83 Q. You took account of them?

A. I took account of them.

Q. And they are noted in these schedules?

A. In those schedules; yes, sir.

Q. Don't you know that those transfer trucks belong to the United States Rolling Stock Company?

A. I do not; I don't think they do.

Q. You know they have that branch rented for the purpose of storing their property?

A. I understand they have their cars stored there.

Q. How many miles of that branch are appropriated for the storage of cars?

A. The whole of it.

Q. How many hundred narrow-gauge cars are stored there?

A. At present I think there is about one hundred and forty.

Q. How many were there at the time of your first examination?

A. I didn't go there at the first examination.

A. These cars had formerly been in use in the narrow-gauge system?

A. The cars on the branch you have reference to?

Q. Yes.

A. Yes, sir.

Q. How many trucks marked series A did you find on the branch?

A. Well, it is mentioned in the schedule there; I don't remember the exact number; I would say about six.

Q. Six sets?

A. No; six single trucks.

Q. Those were regular transfer trucks, were they?

A. I think so.

Q. Did you satisfy yourself at the time of your examination that they were series A trucks?

A. I satisfied myself; yes, sir.

84 Q. What was there on them to indicate that they were series A trucks?

A. Well, there was a few of them—I don't remember how many; a small number—that had the numbers on them; maybe not to exceed two of them. The balance I took them from their general appearance compared with those at Toledo and at Canada Southern Junction and at Holgate.

Q. You assumed from their general appearance that they belonged to series A, although there was no mark on them to indicate that?

A. Yes, sir.

Questions by the MASTER:

Q. Was there any "B. C. T." or "Boston car trust" on them?

A. No; I didn't find it on any. Some of those Middletown and Billmeyer trucks are not marked B. C. T., series A; they are simply marked by the number and known by that on the road.

Q. Had they ever been marked B. C. T.?

A. I don't think they had.

Questions by Mr. FAIRBANKS:

Q. How did you know they were intended to be a part of what is known as series A?

A. I judged from the build of the trucks, and those that had the numbers on them I so noted it.

Q. Didn't some of those trucks bear the same number that some of the cars bore?

A. No. Cars numbered 2200, I think, were coal cars. I can't place the 2100's now. The cars, with the exception of the Middletown build, none of them had these trucks.

Q. How many cars are there of the Middletown build?

A. Somewheres near 300.

Q. What were their numbers?

85 A. I don't remember that.

Q. Well, now, were not the trucks under those Middletown cars of the same build as the other trucks?

A. They were nearly the same. They didn't have the same side bearings; didn't have as long a side bearing.

Q. Were those noted as not transfer trucks under Middletown cars?

A. Those noted as not transfer trucks are not Middletown build.

Q. None of the Middletown trucks, then, were transfer trucks?

A. Yes; they were. The Middletown Works furnished 100 trucks; they also furnished quite a number of cars.

Q. You say the Middletown Works furnished 100 trucks?

A. Yes, sir.

Q. When did they furnish them?

A. About the same time as they furnished the cars—about '70.

Q. Were you on the road then?

A. Yes, sir; on the west end.

Q. In construction?

A. In 18—. Did I say '70. I didn't mean that. I mean about 1880, I think it was, these Middletown cars came on to the road.

Q. Into what series were the Middletown cars put?

A. In series C and D, as near as I can remember just now.

Q. You were not in charge of the mechanical department then?

A. No, sir; never was in charge of the mechanical department.

Q. And your only information as to the number of Middletown cars and the series in which they were put is from hearsay, is it?

A. Well, it is taken from a record of the cars.

Q. Where is that record?

A. In the car accountant's office, Toledo.

86 Q. Is that where you got this information?

A. Yes, sir.

Q. When did you get it?

A. In 1884 and '85.

Q. Since you began this examination?

A. Yes, sir.

Q. And from that record you are able to swear they acquired that many cars from the Middletown Works in 1880?

A. No, sir; I don't know how many.

Q. You don't know how many they received?

A. No, sir.

Q. Now, isn't that so as to the trucks?

A. Yes, sir; I got a list of the numbers——

Q. (Interrupting.) And that is the source of your information?

A. I got my information as to each car trust and series from the car accountant's books.

Q. But how many cars or how many trucks in each series you don't know?

A. I don't pretend to know.

Agreement Between Mr. Fairbanks and Mr. Irvine.

It is understood that the agreements, testimony, and stipulations in the matter of the intervening petition of George William Ballou, trustee, in these causes in this court shall be used for the same purposes and with like effect in the intervening petition of said Ballou filed in the circuit court of the United States for the southern district of Ohio, western division.

The cross-examination of Mr. BALL was then resumed as follows:

By Mr. FAIRBANKS:

87 Q. How many transfer trucks did you examine?

A. I examined one hundred and sixteen.

Q. How many trucks did you examine that were not transfer trucks?

A. Twenty-six.

Q. How many of the 116 transfer trucks were distinctly and clearly marked Boston car trust, series A?

A. That I couldn't tell.

Q. Have you any data that will enable you to tell?

A. No, sir.

Q. Did you preserve any?

A. No, sir.

Q. You say some of these transfer trucks had been used and some had not. Now, I will ask you as to those that had been used, whether you can say as to the time they had been in service, if you know?

A. Well, they are in service all the time. A certain number of them are in service all the time.

Q. Now, how many cars do they transfer in the course of a month?

A. I don't know very much about that.

Q. Don't you know it is exceedingly small?

A. It is at certain seasons of the year.

Q. Isn't it, as a rule?

A. Well, I don't know; it is in proportion to the amount of business done.

Q. What you mean by being in service all the time is now and then they would use a set of trucks?

A. While I was there, sometimes they run them out in lots of ten or twelve. I was at the transfer and saw them.

Q. When were you there?

A. Last summer.

88 Q. At what time last summer?

A. Along in July.

Q. Ten cars from where?

A. From the Canada Southern. Well, now, I don't know whether that was the time they spoke of the ten cars or not. I had some cars to load there. I loaded severel times at Toledo these narrow-gauge cars which I sold.

Q. When, lately?

A. In the last six or eight months.

Q. And you loaded them on standard-gauge cars?

A. Yes, sir; on standard-gauge cars at the Ramsey transfer. At the same time I used these transfer-men to do the loading, and I remember of them speaking at one time of ten Canada Southern cars that was transferred.

Q. Now, hasn't the principal use of these transfer trucks covering the period you are speaking of been in loading standard-gauge cars with this narrow-gauge equipment for shipment off on other roads?

A. I don't understand that question.

Q. Hasn't the principal transfer business been in transferring cars loaded with narrow-gauge equipment during the last year or year and a half?

A. No, sir; that hasn't cut any figure in it at all.

Q. You loaded a number of these narrow-gauge cars for shipment off on other roads?

A. Loaded a number for other roads; yes, sir.

Q. And used the transfer trucks for that purpose?

A. No, sir.

Q. Then how did you get the standard-gauge cars down on the road?

A. We took narrow-gauge cars to the standard-gauge trucks.

89 Q. You mean narrow-gauge trucks?

A. No; one truck right inside the other; that is the reason we want to that transfer; one truck runs right into another.

Q. But as to the actual service you have no definite, specific knowledge?

A. No, sir.

Q. The extent of the use you don't know?

A. No, sir.

Q. But the fact is, as you have testified to, that a large number of them had never been used since they had been put on the road?

A. About twenty-five per cent. of them.

Q. Did you make an estimate?

A. I got at that from the condition they were in at the different places.

Q. Then, if there was twenty-five per cent. that never rolled a wheel on the road, there was seventy-five per cent. that had been used to some extent?

A. Yes, sir.

Q. And to what extent the seventy-five per cent. had been used you don't know?

A. No, sir; I couldn't say that.

Q. I understand from your schedules that there was none of these transfer trucks found at Musselman or at West Dayton or at Stillwater Junction?

A. No, sir.

Q. These are the only transfer stations on the Southern Division?

A. They used to be transfer stations; they are not now.

Q. The only transfer stations are at Holgate and Canada Southern Junction. These two points are where?

90 A. On the Toledo Division. I mentioned the matter of those three stations—Musselman, Stillwater Junction, and West Dayton—because Mr. Irvine asked me to go there and see if there was any.

Q. Now, I want to see again if I understand you distinctly. In your schedules here you have noted, under the heading Boston car trust, series A, a large number of trucks. I understand you to say that a large number of those trucks, as a matter of fact, did not bear the letter A or even Boston car trust series on them in any way, shape, or manner.

A. Well, in making that record I didn't pay a great deal of attention to the matter of mark, Boston car trust, series A, where the number was on the truck. I considered where the number was on the truck showing that it was a series A car or the same kind of stencil used, and, again, the general build of the car. I knew them just as I know my family.

Q. Well, if they were marked Boston car trust wouldn't the series be on them?

A. They were not all marked; that is the trouble, and I have made a note of those that I considered were the Boston car trust, series A, trucks that had no marks.

Q. I will ask you if you found a large number of other transfer trucks on the road that were not series A.

A. Yes, sir.

Q. To whom did they belong?

A. There was a number belonged to the Dayton and Southeastern. I found, I think, between thirty-five and forty; probably forty.

Q. Narrow or standard gauge?

A. Narrow gauge.

Q. Did you find any Dayton and Southeastern standard-gauge trucks?

91 A. Yes; I found ten in all—Dayton and Southeastern and Dayton, Covington and Toledo—transfer trucks that I believe belonged to the Dayton and Southeastern, as I understand it.

Q. Did you find any more transfer trucks or extra car trucks belonging to either of these divisions?

A. Well, yes; I found one pair of trucks at Canada Southern Junction that belonged to the Dayton and Southeastern.

Q. Is that pair used there?

A. It is car number 702. It is in use as an oil-house, and it isn't worth picking up and putting on trucks and moving away.

Q. Were any of the Dayton and Southeastern transfer trucks in use at either Holgate or Canada Southern Junction?

A. Yes, sir; in use at both places.

Q. To what extent were they used?

A. You can't determine that at all. I don't think they ever kept any record of it. If they have a standard-gauge car they want to run out on the road they take just the two that are handiest to the transfer.

Q. Were those Dayton and Southeastern trucks in use as much as the other trucks?

A. I think they were.

Q. By whom were they made?

A. By Barney and Smith. Now, I would say here that a number of those were numbered and a number were not. There is probably one-third that bore no number at all. The only way you can tell them is they are precisely the same. They are the Barney and Smith build; the same castings, wheels—the wood-work is the same. Now, I determined them just as I determined those other trucks and because those noted as not being transfer trucks are a different make.

92 Q. Why have you included those that are not transfer trucks?

A. Simply because I understood they belonged to the trust.

Q. Who told you they belonged to the trust?

A. I found them in the records in the car accountant's office.

Q. Were those records made up by you?

A. No, sir.

Q. Did you ever have anything to do with the making of them?

A. I did not.

Q. When were you told those trucks belonged to series A?

A. I saw them on the books.

Q. That was during the summer of '85, since Mr. Irvine requested you to do this?

A. Mr. Irvine requested Mr. Craig to let me examine certain books, that I might make a record of the trucks.

Q. For the purpose of instituting this claim?

A. No, sir; not that particularly; but I had charge of all the car records very much.

Q. This claim was instituted since that examination of the records, then?

A. Yes, sir.

Q. And then you began to gather evidence?

A. No, sir; as I understand it I was employed to gather everything that was in car trusts, and I didn't make my report of the trucks at the time I made my report of the cars.

Q. Mr. Irvine told you to use this information and follow it up as a basis for making this claim—this information you got from the receiver's books?

A. There was nothing stated about using that in this case.

Q. Did you get your information and report it to him first?

A. He employed me; first asked me in November to
93 make up this matter of trucks and carry it through, and it wasn't until yesterday that I told him of the contents of those books.

Q. Did he tell you he wanted a statement of transfer trucks and trucks that were not transfer trucks?

A. No, sir; he told me to get everything in series A. I took everything that I concluded belonged to that trust.

Q. I see here one truck marked B. C. T., series A, not a transfer truck, number 2329——

By the MASTER:

Q. (Interrupting.) You say it is marked B. C. T. Is it marked that way?

A. Yes, sir.

Q. Some were marked that way?

A. Yes, sir; I didn't call anything belonging to that series unless it was marked—that is, the regular transfer trucks—and all such trucks there noted as not being transfer trucks you will see are marked B. C. T., series A.

Questions by Mr. FAIRBANKS:

Q. Truck 2329, you inspected that in February, 1886, did you?

A. No, sir; that is under car number 2329.

Q. Whose car is that?

A. That is a Southern Ohio Coal & Iron Company car.

Q. Who had been using that Southern Ohio Coal & Iron Co. car?

A. All the divisions; I don't know which.

Q. Who does it belong to?

A. I don't know what series it is in. My impression is it is in series E; it is in some series, I think.

Q. How do you know?

A. Because that number is in some series.

Q. As to what series it is in you have no information?

A. Well, I have no information with me.

94 Q. Now, here is one truck, number 2063, under car 5365, not a transfer truck, marked B. C. T., A, at Delphos December 28, '85?

A. Well, there is a case now—there is a truck which is an ordinary small freight-car truck; it is not a transfer truck, but it is numbered; it bears one of the numbers which belongs to the Boston car trust, series A, and is also marked Boston car trust, series A.

Q. The car is?

A. The truck is.

Q. How about the car?

A. The car is 5365.

Q. Is that a Boston car trust car?

A. No, sir; that belongs to the railroad; it belongs to the Toledo Division of the T., C. & St. L.

Q. How do you know?
A. I know that number belongs to it.
Q. You are sure that 5365 belongs to the Toledo Division?
A. Well, it is so understood.
Q. Isn't that one of the Clark, Post & Martin cars?
A. No, sir; that is not one of them. Of the few cars that the railroad company had left after marking up some to fill up destroyed cars in certain series they renumbered them and put them all in 5300, and that being a 5300 car it must belong to the railroad company.

By the MASTER:

Q. In that way they were separated from the cars in the car trust?
A. Yes, sir; everything above 5299 belongs to the railroad company.

95 By Mr. FAIRBANKS:

Q. Don't you know, Mr. Ball, there are a great many cars belonging to the company that are not renumbered?
A. There was some not renumbered, and they remain so.

By the MASTER:

Q. There are some, then, under 5299 that belong to the corporation?
A. Yes, sir; as I understand it.
Q. Are they designated at all?
A. Well, they are all marked Toledo, Delphos and Indianapolis, T., D. & B., and T., D. & I., and I think there is one or two marked D. & K. and one D., B. & F.
Q. How many are there of those low numbers?
A. Of the flat cars there are probably twenty; of the box cars there is about the same number.
Q. And coals and stock, how many?
A. No coals, and there should be one stock car; I never could find it, though.

By Mr. FAIRBANKS:

Q. I see you note here that some of these trucks are of the York build; how many trucks did they build and what kind?
A. They built one hundred.
Q. Did they build any more?
A. I don't know that they built 100; the car trust calls for one hundred trucks of their build.
Q. Now, whether they built any trucks that were not placed in car trusts you don't know?
A. In this particular car trust are you speaking of?
Q. Any trust or for the railroad company.
A. No; I don't know of any trucks they built except in
96 series A and about fifty flat cars; they built the cars and, of course, built the trucks for them.
Q. Did you examine any of these flat-car trucks?

A. Yes, sir; and there is none of them included in my schedules.

Q. Do you know whether the trucks of those flat cars had been taken out and used for transfer purposes?

A. No, sir; I don't think they have; they couldn't unless they changed the side bearings on them.

Q. And they could do that readily?

A. Yes, sir.

Q. And don't you know that a good many trucks on the road were changed into regular transfer trucks?

A. Well, they couldn't do that very well; the time they did this they took a large number of trucks that were supposed to belong to the railroad company.

Q. And made them into transfer trucks, didn't they?

A. No; they didn't do anything more than to have them marked Boston car trust, series A.

Q. Now how many of those have you inspected?

A. Well, I have noted there twenty-six.

Q. Now those twenty-six trucks belonged to the railroad company, did they?

A. That is my understanding about it. They belonged under cars which belonged to the railroad company.

Q. And they have been marked Boston car trust, series A, and are included in these schedules?

A. Yes, sir. I examined a great number of trucks besides those that I noted; I only noted such as I was satisfied belonged to Boston car trust, series A.

By the MASTER:

Q. And in that you were governed by the series numbers
97 and the general appearance of the truck?

A. Yes, sir.

By Mr. FAIRBANKS:

Q. And at that time you knew that some of these trucks that bore the serial number came from under cars that belonged to the railroad company?

A. Yes, sir. They just simply go to the trucks of the cars and mark it Boston car trust, series A. The men had a certain number of trucks destroyed which they had to replace, and they changed them until they got that car trust full. Then, after that the car-trust people acknowledged receipt of a certain number of trucks. Mr. Phillips acknowledged receipt of a number of trucks in November, 1882.

Q. Now, those cars had been in service some time before that on the road—before they had been marked that way?

A. Yes, sir.

Q. How long had they been in service?

A. They were the very first cars they had bought.

Q. After they had bought them and issued their bonds they went along and stenciled them Boston car trust, series A?

A. Not the car bodies—the trucks.

By the MASTER:

Q. Now, before that did the truck bear any number at all?

A. No, sir; it may have bore the original number of the car.

Q. If it had any it must have been the original number of the car?

A. Yes, sir.

Q. Then, the effect of that would be, they took a truck which really belonged to the railroad company and marked it to put it in the place of some truck that had been destroyed?

98 A. Yes, sir; and even then they are not fit to transfer with. They never even took the pains to put the side bearings on them.

Questions by Mr. FAIRBANKS:

Q. How do you know they were for the purpose of replacing Boston car trust trucks?

A. That is what I understand.

Q. Who told you?

A. I found that number in the office at Toledo.

Q. Your testimony as to that is made up from impressions you gathered from these records?

A. Yes, sir.

Q. How many of those trucks were stenciled in that manner to take the place of Boston car trust trucks?

A. Those that had been destroyed.

Q. You don't know how many, do you?

A. No, sir; I couldn't tell that.

Q. You say you were informed at Holgate and Canada Southern Junction, at a certain time there were out on the road nine Canada Southern cars from the junction and five Baltimore and Ohio cars from Holgate, making a total of thirteen transfer trucks out on the road?

A. Yes, sir.

Q. Whose trucks were those?

A. I couldn't say.

And further deponent saith not.

99 BALL'S EXHIBIT No. 1.—Pages 1 to 14.

Toledo, Cincinnati and St. Louis Railroad Equipment Report, Showing Location.

Boston car trust, series A.

Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.
Trucks		2037													
		2038													
		2039													
		2040													
		2041													
		2042													
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		2082													
		2083													
		2084													
		2085													
		2086													

Trucks -- 2037 -- At Holgate Ap'l 4th, '85.
2038 -- At C. S. Junc. Ap'l 2d, Dec. 30, '85.
2040 -- At C. S. Junc. Ap'l 2d, Dec. 30, '85.
2044 -- At Dayton shop Ap'l 21, '85, Jan. 18, '86; one pair wheels & boxes out.
2045 -- At Dayton shop Ap'l 21, '85.
2046 -- " C. S. Junc. Ap'l 2, '85.
2047 -- " Dayton shop Ap'l 21, '85, Jan. 18, '86.
2048 -- " " " " " '85, " " "
2053 -- At Dayton shop Ap'l 21, '85, Jan. 18, '86.
2056 -- At Dayton shop Ap'l 21, '85, Jan. 18, '86.
2057 -- " Holgate Ap'l 4th, '85.
2061 -- At C. S. Junc. Dec. 30, '85.
100
2063 -- Under car 5365; not a transfer truck; marked B. C. T., A; at Delphos Dec. 28, '85.
2064 -- At C. S. Junc. Ap'l 2, Dec. 30, '85.
2067 -- At C. S. Junc. Ap'l 2d, '85.
2070 -- At C. S. Junc. Ap'l 2d, Dec. 30, '85.
2071 -- " " " "
2072 -- " " " "
2075 -- At C. S. Junc. Ap'l 2d, '85.
2076 -- At McClure Ap'l 4th, Holgate Dec. 29th, '85.
2079 -- At Holgate Ap'l 4, Dec. 29, '85.
2080 -- At Delphos shop May 13th, '85.
2081 -- At Holgate Ap'l 4th, Dec. 29th, '85.
2082 -- " " " "
2085 -- At C. S. Junc. Ap'l 2d, Dec. 30, '85.
2086 -- At Hamilton Ap'l 4th, Holgate Dec. 29, '85.

101 *Toledo, Cincinnati and St. Louis Railroad Equipment Report, Showing Location.*

Boston car trust, series A.

Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.
Trucks		2087		At C. S. Junc. Ap'l 2d, Dec. 30, '85.											
		2088		" " "											
		2089		At Hamilton Ap'l 4, Holgate Dec. 29, '85.											
		2090		At Holgate " Dec. 29, '85.											
		2091													
		2092		At Holgate Dec. 29th, '85.											
		2093		At C. S. Junc. Ap'l 2d, '85.											
		2094													
		2095													
		2096		At Holgate Ap'l 4, Dec. 29, '85.											
		2097		At Dayton shop Ap'l 21st, '85.											
		2098													
		2099		At C. S. Junc. Ap'l 2, Dec. 30, '85.											
		2100													
		2101													
		2102													
		2103													
		2104													
		2105		At Holgate Ap'l 4th, Dec. 29, '85.											
		2106		At C. S. Junc. Ap'l 2d, Dec. 30th, '85.											
		2107													
		2108		At C. S. Junc. Ap'l 2d, Dec. 30th, '85.											
		2109													
		2110		At Holgate Ap'l 4th, Dec. 29, '85.											
		2111		At C. S. Junc. Ap'l 2d, Dec. 30th, '85.											
102		2112		At Dayton shop Ap'l 21st, '85, Jan. 18, '86; all gone but bolster.											
		2113													
		2114		At C. S. Junc. Ap'l 2, Dec. 30, '85.											
		2115		" " " '85.											
		2116		" " " "											
		2117		" " " "											
		2118		" " " Dec. 30, '85.											
		2119		" " " '85.											
		2120		At Holgate Ap'l 4, '85.											
		2121													
		2122		At Holgate Dec. 29, '85.											
		2123													
		2124													
		2125													
		2126													
		2127		At C. S. Junc. Ap'l 2d, '85.											
		2128		At McClure Ap'l 4th, '85.											
		2129		At C. S. Junc. Ap'l 2d, '85.											
		2130													
		2131													
		2132		At Holgate Ap'l 4th, Dec. 29th, '85.											
		2133													
		2134													
		2135													
		2136		At Dayton shop Ap'l 21st, '85.											
103		2137													
		2138		At C. S. Junc. Ap'l 2, Dec. 30, '85.											
		2139		At Holgate Ap'l 4, Dec. 29, '85.											
		2140													
		2141		Under car 834, Jan. 18, '86, at Dayton, O.											
		2142		At Holgate Ap'l 4, Dec. 29, '85.											

Toledo, Cincinnati and St. Louis Railroad Equipment Report, Showing Location.

Boston car trust, series A.

Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.
Trucks	--	2143													
		2144	--	Under D. S. E. flat 95, Dec. 28, '85; not a transfer truck; marked B. C. T., A.											
		2145	--	At Holgate Ap'l 4, Dec. 29, '85.											
		2146	--	Same as 2144.											
		2147	--	At C. S. Junc. Dec. 30, '85.											
		2148	--	" " Ap'l 2, Dec. 30, '85.											
		2149	--	" " Dec. 30, '85.											
		2150													
		2151													
		2152	--	At Holgate Ap'l 4th, Dec. 29, '85.											
		2153	--	Under car, T., C. & St. L., 5382, Dec. 28, '85; not a transfer truck; marked B. C. T., A.											
		2154													
		2155	--	At C. S. Junc. Ap'l 2, Dec. 30, '85.											
		2156	--	Under car, T., D. & B., 761, Dec. 28th, '85.											
		2157													
		2158	--	At C. S. Junc. Ap'l 2, Dec. 30, '85.											
		2159	--	" Holgate Ap'l 4, Dec. 29, '85.											
		2160	--	" " " "											
		2161	--	At C. S. Junc. Ap'l 2, '85.											
104		2162	--	At C. S. Junc. Ap'l 2, Dec. 30, '85.											
		2163													
		2164													
		2165	--	Under car 897, at Washington C. H., O., 1, 30, '86.											
		2166	--	At C. S. Junc. Ap'l 2, '85.											
		2167	--	At Holgate Dec. 29th, '85.											
		2168	--	At C. S. Junc. Ap'l 2, Dec. 30, '85.											
		2169													
		2170	--	At Hamilton Ap'l 4, Holgate Dec. 29th, '85.											
		2171	--	At C. S. Junc. Ap'l 2, Dec. 30, '85.											
		2172	--	" " "											
		2173	--	At Holgate Ap'l 4, '85.											
		2174	--	At C. S. Junc. Ap'l 2, Dec. 30, '85.											
		2175	--	At Holgate Ap'l 4, Dec. 29, '85.											
		2176	--	" " '85.											
		2177													
		2178													
		2179	--	At Holgate Ap'l 4, Dec. 29th, '85.											
		2180													
		2182	--	Under car 2497, at Toledo, 1, 28, '86.											
		2183	--	At C. S. Junc. Ap'l 2, Dec. 30, '85.											
		2184	--	At Dayton shop Ap'l 21, '85.											
		2185	--	At Holgate Ap'l 4, '85.											
		2186	--	At C. S. Junc. Ap'l 2d, Dec. 30, '85.											
		2187													
		2181	--	At C. S. Junc. Ap'l 2d, Dec. 30, '85.											
105		2188													
		2189													
		2190	--	At Holgate Ap'l 4, Dec. 29, '85.											
		2191													
		2192													
		2193													
		2194													
		2195	--	At C. S. Junc. Ap'l 2, Dec. 30, '85.											
		2196													
		2197													

Toledo, Cincinnati and St. Louis Railroad Equipment Report, Showing Location.

Boston car trust, series A.

Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.
Trucks		2198													
		2199	--	At C. S. Junc. Ap'l 2, Dec. 30, '85.											
		2200													
		2201													
		2202													
		2203													
		2204													
		2205													
		2206													
		2207													
		2208													
		2209													
		2210	--	At Dayton shop Jan. 18, '86; not transfer truck; m'k'd B. C. T., A; no wheels.											
		2211													
		2212	--	At Hamilton Ap'l 4th, '85.											
106		2213													
		2214													
		2215													
		2216													
		2217													
		2218													
		2219													
		2220													
		2221													
		2222													
		2223	--	At Delphos shop May 13th, '85.											
		2224	--	" " " " "											
		2225													
		2226													
		2227													
		2228													
		2229													
		2230													
		2231													
		2232													
		2233													
		2234													
		2235													
		2236													
107	Duplicate numbers.														
Trucks		2040	--	At Canada Southern Junc. Dec. 30th, '85.											
		2063	--	" " Ap'l 2, Dec. 30th, '85.											
		2076	--	Under car 1049, Dec. 28, '85; not a transfer truck; marked B. C. T., A.											
		2118	--	At Holgate Ap'l 2, Dec. 30, '85.											
		2142	--	Under car 812, Dec. 28, '85.											
		2155	--	At C. S. Junc. Dec. 30, '85.											
		2162	--	At Dayton shop Ap'l 21, '85.											
		2166	--	At Holgate Ap'l 4, Dec. 29, '85.											
		2168	--	At C. S. Junc. Ap'l 2, Dec. 30, '85.											
		2171	--	" " " "											
		2173	--	At Holgate Ap'l 4th, '85.											
		2174	--	At Dayton shop Ap'l 21st, '85.											
		2176	--	At Holgate Ap'l 4, Dec. 29, '85.											
		2181	--	At C. S. Junc. Ap'l 2d, Dec. 30th, '85; both pair- of wheels gone.											

Toledo, Cincinnati and St. Louis Railroad Equipment Report, Showing Location.

Boston car trusts, series A.

Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.
Trucks	--	2141	--	Under car 5365, Dec. 28, '85; not a transfer truck; marked B. C. T., A.											
		2145	--	Under car 451, Jan. 6, '86, on Shane's Branch.											
		2153	--	" " 4019, " " " " "											
108				At Canada Southern Junc. Ap'l 2d, '85.											
				No mark or number; wheels are Lobdell Car Wheel Co.											
				" " " " "											
				" " " " "											
				" " " " "											
				" " " " "											
				" " " " "											
				" " " " "											
				" " " " "											
		2091	--	Number cut on bolster with a die; wheels, Whitney & Son.											
		2095	--	" " " " "											
		2095	--	" " " " "											
				At Holgate Ap'l 4th, '85:											
				No mark or number; " "											
				" " " "											
				" " " "											
				" " wheels, Lobdell Car Wheel Co.											
				" " " "											
				" " " "											
				" " " "											
				At Hamilton, O., Ap'l 4, '85:											
				No mark or number; wheels, Whitney & Son.											
109				No numbers.											
Trucks	--	----	--	At Holgate Dec. 29th, '85; Yoch build.											
				" " " "											
				" " " "											
				" " " "											
				" " " "											
				" " " "											
				" " Middletown build.											
				" " " "											
				" " " "											
				" " " "											
				" " " "											
				Under T., D. & B., 158, Jan. 13, '86; not a transfer truck; marked B. C. T., A.											
				Under T., D. & B., 157, Jan. 13, '86; not a transfer truck; marked B. C. T., A.											
				Under T., D. & B., 157, Jan. 13, '86; not a transfer truck; marked B. C. T., A.											
				Under 969, Jan. 6, '86, on Shane's Branch.											
				" " " " "											
				" 2552, " " "											
				" 5144, " " "											
				" 1872, " " "											
				" 471, " " " Yoch build.											
				At Dayton shop Ap'l 21st, '85; wheels, Whitney & Son.											
				" " " " "											
				" " " " "											

Toledo, Cincinnati and St. Louis Railroad Equipment Report, Showing Location.

Boston car trust, series A.

Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.

110 No numbers.

Trucks - -- ---- -- Under car 5382, Dec. 28th, '85; not a transfer truck; marked B. C. T., A.
Under car 1049, Dec. 28th, '85; not a transfer truck; marked B. C. T., A.
Under car 2889, Dec. 28th, '85; Yoch build.
" 160, " not a transfer truck; marked B. C. T., A.
Under car 160, Dec. 28th, '85; not a transfer truck; marked B. C. T., A.
Under car 136, Dec. 28th, '85; not a transfer truck; marked B. C. T., A.
Under car 136, Dec. 28th, '85; Yoch build.
" 232, " not a transfer truck; marked B. C. T., A.
Under car 232, Dec. 28th, '85; not a transfer truck; marked B. C. T., A.
At Canada Southern Junc. Dec. 30th, '85; Yoch build.
" " " " "
" " " " "
" " " " "
" " " " "
" " " " "
" " " " Middleton build.
" " " " "
" " " " "
" " " " "
" " " " "
" " " " "
" " " " "
Under D. & I., 3744, Jan. 2d, '86; not a transfer truck; marked B. C. T., A.
Under 847, " " Yoch build.

111 At Cincinnati, Jan. 16th, '86:

Trucks - -- ---- -- One marked B. C. T., A; not a transfer truck; "no wheels or boxes."
One marked B. C. T., A; not a transfer truck.
" transfer truck; no mark.
At Dayton, O., Jan. 18th, '86:
2174 -- Wheels and boxes gone.
2162 -- O K.
No mark or number; Yoch build.
" " "
" " "
" " "
" " "
" " Middletown build; 1 pair wheels & boxes gone.
At Musselman's. } No trucks.
" West Dayton. }
" Stillwater Junction. }

112 S'k'd; marked B. C. T., series A; not a transfer truck; under D. & I., 2347, 1, 29, '86.
S'k'd; marked B. C. T., series A; not a transfer truck; under D. & I., 2347, 1, 29 '86.

Toledo, Cincinnati and St. Louis Railroad Equipment Report, Showing Location.

Boston car trusts, series A.

Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.	Initials.	Number.	Kind.
Trucks - -- ----	S'k'd; marked B. C. T., series A; not a transfer truck; under D. & I., 3742, 2, 1, '86.														
	S'k'd; marked B. C. T., series A; not a transfer truck; under D. & I., 3742, 2, 1, '86.														
	S'k'd; marked B. C. T., series A; not a transfer truck; under D. & I., 2329, 2, 1, '86.														
	S'k'd; marked B. C. T., series A; not a transfer truck; under D. & I., 2329, 2, 1, '86.														

113 *Agreement between Mr. Fairbanks and Mr. Irvine.*

It is stipulated and agreed between the complainants and intervening petitioner, Geo. Wm. Ballou, trustee, that the affidavits of Willard Pennock and George Wm. Ballou and attached exhibits thereto shall be accepted by the master and used the same as if said affidavits were the depositions duly taken after notice by the said parties respectively.

Toledo, Delphos & Burlington R. R.

Memorandum.

TOLEDO, OHIO, *March 11th*, 1882.

To Pennock Bros., Minerva, Ohio.

GENTLEMEN: Please number the ten box cars that you are building for this company 557 to 566, both numbers inclusive. Letter the cars T., C. & St. L., B. C. T., series "A."

Yours truly, I. H. F. WIERS,
Sup't Mach'y.

Page 127.

1882.
March 22. George W. Ballou & Co.:
To 5 box cars, 450 each ---------- 2,250
Nos. 557, 558, 559, 560, 561.

Page 128.

March 30. George W. Ballou & Co.:
To 5 box cars, at 450 each ---------- 2,250
Nos. 562, 563, 564, 565, & 566.

STATE OF OHIO, *Carroll County,* } *ss:*

Willard Pennock, being first duly sworn, states that he is a

member of the copartnership firm of Pennock Brothers, doing
114 business at Minerva, Ohio, and composed of himself and his brother, I. N. Pennock, and that said copartnership existed prior to and since the 22nd day of March, A. D. 1882.

And deponent says that on the 22nd day of March, A. D. 1882, said firm shipped on previous contract with *to* Messrs. Geo. Wm. Ballou and Company, of New York, five narrow-gauge box freight cars, and on the 30th day of March, A. D. 1882, five more narrow-gauge box cars. Said box cars were made according to specifications furnished by the Toledo, Cincinnati & St. Louis Railroad Company and by the order of J. H. F. Wiers, superintendent of machinery of said railroad company. Said cars were lettered "Toledo, Cincinnati and St. Louis" and numbered from "557 to 566," inclusive, and were also by like orders lettered "B. C. T., series A." Said cars were sold to and paid for by George Wm. Ballou & Co., of New York city, and by their order were delivered to the Toledo, Cincinnati and St. Louis Railroad Co. Deponent further says that he attaches hereto the original orders from said Weirs and true copies from his books, and that said Ballou & Co. paid four — and fifty dollars for each of said cars.

WILLARD PENNOCK.

Sworn to and subscribed in my presence by Willard Pennock this 7th day of January, 1886.

[SEAL.] G. G. GREENWOOD,
Notary Public.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

George Wm. Ballou, being first duly sworn, says that he is the petitioner named in certain intervening petitions filed in the United States circuit court for the district of Indiana in certain ac-
115 tions pending in said court, wherein The Central Trust Company of New York is complainant and The Toledo, Delphos & Burlington R. R. Co. *et al.* and The Toledo, Cincinnati and St. Louis R. R. Co. *et al.* respectively are defendants, and that he is and prior to and since the 22nd day of March, 1882, was a member of the firm of Geo. Wm. Ballou & Co., doing business in New York city, New York, and Boston, Mass.

Deponent further saith that prior to the 22nd day of March, A. D. 1882, said firm of Geo. Wm. Ballou & Co. contracted with the firm of Pennock Bros., of Minerva, Ohio, to make and sell to said firm ten narrow-gauge box freight cars, which they did, and for which said Geo. Wm. Ballou and Co. paid said Pennock Bros. four — five *thousand* dollars. Said cars were purchased for the purpose of being sold and transferred to said Geo. Wm. Ballou and F. M. Holmes, trustees, of Boston car trust, series A, and were so conveyed and transferred to said trustees, to be subject to all the provisions and stipulations set out in a certain deed of trust executed by said Toledo, Delphos & Burlington R. R. Co., said Wm. Ballou & Co., and said trustees; and, further, that by an arrangement with the said Toledo,

Cincinnati & St. Louis R. R. Co., the successor of the Toledo, Delphos & Burlington R. R. Co., the said railroad company prescribed the specifications on which said cars were constructed, and also the style of lettering and numbering said cars; and, further, that said cars from the time of their delivery to the Toledo, Cincinnati & St. Louis R. R. Co. (to which Co. they were delivered by order of said firm of Geo. Wm. Ballou & Co.) to this day have been and are now the property of the trustees of said Boston car trust, series A, so set out and described in said intervening petitions aforesaid.

And further deponent saith not.

GEO. WM. BALLOU.

116 Sworn to and subscribed in my presence by George Wm. Ballou, who is to me personally known to be the person named in foregoing affidavit, this sixteenth day of January, 1886.

F. SPECHT,

[SEAL.] *Notary Public, Kings & N. Y. Co's, N. Y.*

117 NEW YORK, *February 20th*, 1886.

Present: Mr. Chapman, for intervening petitioner.

Testimony of George Wm. Ballou, taken in pursuance of the notice hereto annexed, before B. Moynahan, notary public, New York city and county.

GEORGE WILLIAM BALLOU, produced by the intervening petitioner, being duly sworn, testified as follows:

Direct examination by Mr. CHAPMAN:

Q. Give your full name, residence, and occupation?

A. George William Ballou; residence, New York; occupation, banker and broker.

Q. Are you an intervening petitioner in the case of The Central Trust Company and others against The Toledo, Delphos & Burlington Railroad Company, and The Central Trust Company of New York against The Toledo, Cincinnati & St. Louis Railroad Company?

A. I am.

Q. In what capacity are you an intervening petitioner in that case?

A. As trustee for the bondholders of series A, B, C, D, & E, and what other bonds there may be of the Boston car trust.

Q. Are you the sole trustee under the car-trust agreements referred to in series A, B, C, D, & E?

A. I am.

Q. Were you originally the sole trustee?

A. No; I had an associate—Mr. F. M. Holmes, of Boston, who is now dead.

Q. When did he die?

A. In 1884, September thirteenth.

Q. Has any successor of Mr. Holmes been appointed?

A. No.

Q. Were the car-trust agreements set forth in your inter-
118 vening petitions duly executed as therein set forth?

A. They were.

Q. By whom was the equipment furnished described in such car-trust agreements?

A. It was furnished by George William Ballou & Co.

Q. Who was George William Ballou & Co.?

A. It was a partnership doing business as bankers in New York and Boston. At one time George H. Holt was a partner; I think when some of these instruments were executed. At another time William H. Bingham, Allen S. Weeks, and G. H. Darling were partners, with myself making up the firm.

Q. Who paid for the equipment?

A. George William Ballou & Co.

Q. Who prepared the specifications of the equipment and arranged as to prices and delivery?

A. I think that was done by the master mechanic and possibly the president of the Toledo, Delphos & Burlington Railroad Company.

Q. For whom were the officers of the railroad company acting in making these directions, as to delivery and so forth?

A. They were acting as the agents of George William Ballou & Co. in that matter.

Q. To whom were the bills made and by whom were they paid?

A. The bills were all paid by George William Ballou & Co. I think that the bills were made out to George William Ballou & Co. They were in most cases, anyhow.

Q. After the execution of the car-trust agreements by whom and to whom were they assigned?

A. They were assigned by George William Ballou & Co. to George William Ballou and F. M. Holmes, trustees for the bondholders.

Q. What sums have ever been paid by the railroad com-
119 pany to the trustees or to the holders of these bonds?

A. $2,200 was paid to the trustees for account of series A. There never has been a dollar paid to the trustees on any other series.

Q. Have you any knowledge as to whether any sums have been paid to the holders of the bonds?

A. No; I do not think there has been a dollar paid to them, except the interest for a little while.

Q. Where are the equipment bonds issued under these car-trust agreements, series A, B, C, D, & E?

A. They were sold to investors and are scattered throughout New England and are held in small amounts by savings banks and investors; all in the hands of innocent holders.

Adjourned until 5 p. m. this day.

At 5 p. m. the hearing was further adjourned by consent until February 21, at 10 a. m.

FEBRUARY 21—10 a. m.

At the request of Mr. Ingersoll the hearing was further adjourned to March 22nd, 1886.

NEW YORK, *March 22nd*, 1886.

Appearances: Mr. Chapman, for intervening petitioner.
Mr. Ingersoll, —— ——.

NEW YORK, *March 22nd*, 1886.

Cross-examination of GEORGE WILLIAM BALLOU by Mr. INGERSOLL:

Q. Do you remember whether the leases for these cars were made between the Western Construction Company and the Toledo, Delphos & Burlington Railroad Company?

A. No; I think they were made between George William
120 Ballou & Co. and the railroad.

Q. And the Toledo, Delphos & Burlington Railroad Company?

A. The Toledo, Delphos & Burlington Railroad Company.

Q. These car trusts lettered A, B, C, D, & E; do you remember the number of cars that were actually purchased and put on the road?

A. I cannot tell from memory; the leases show exactly what was furnished.

Q. Do you know when this rolling stock, as a matter of fact, was delivered to the Toledo, Delphos & Burlington Railroad Co.?

A. It was delivered about the time of the date of the leases; some of it was delayed a little, but not much.

Q. Have you any idea now as to the number of cars actually delivered, without looking at the leases?

A. No, I could not; I did not carry in my mind the amount of rolling stock.

Q. As a matter of fact, so far as you know, was the true number of cars put in the leases?

A. All except in one series, and that I think was series B; it was short a few cars, but a true accounting has, I think, been made; so that it is a matter of record what cars were delivered.

Q. Now, do you remember that series E were placed mostly on the Dayton & Southeastern railroad?

A. No; I think they were scattered over the different divisions.

Q. Do you know whether the purchasers of that division have received those cars as a part of their purchase?

A. No; I don't know just where they are.

Q. Now, as a matter of fact, do you know how these cars
121 were divided on the various divisions of the Toledo, Cincinnati and St. Louis railroad?

A. At the time they were delivered the consolidation of the different divisions to become one property.

Q. From Toledo to St. Louis?

A. From Toledo to St. Louis was the last consolidation, and the southern divisions were consolidated about that time.

Q. All into one road?

A. All into one road.

Q. There were eight divisions?

A. Yes; there were eight divisions, but this rolling stock was mostly on seven, one division being wider gauge.

Q. What division is that?

A. Iron Railroad Co.

Q. Those were on the seven divisions?

A. Yes, sir.

Q. Have you any way of knowing how these cars were used—that is, on what divisions they were used?

A. No, sir; I cannot tell except from the records of the company.

Q. You yourself do not know anything about it?

A. No, sir; I have no means of knowing.

Q. You of course know nothing about the number of these cars used on the line between Toledo & St. Louis in comparison with the number used on the other divisions?

A. No; not of my own knowledge.

Q. Did the Western Construction Company own these cars or did they run the cars?

A. George William Ballou & Co. rented the cars to the railroad company, the Toledo, Delphos & Burlington Railroad Company, and Ballou transferred the title to George William Ballou and F. M. Holmes, trustees for the bondholders.

122 Q. What had the Western Construction Company to do with the matter?

A. I do not remember that they had anything to do with it; I have forgotten if they had.

Q. Was W. J. Craig interested in these cars in any way?

A. No, sir.

Q. Was he interested in any rental that might be paid for their use?

A. No; none whatever.

Q. Or in any commission on what might be paid?

A. No; not for a cent.

Q. So that it was not to his interest to have them paid for or rented or anything else?

A. No, sir; he had no interest in them.

Q. Do you remember when the roads went into the hands of a receiver?

A. I have forgotten the date; it is a matter of record.

Q. At that time did you represent the real owners of these cars?

A. Yes, sir, as trustee; certainly.

Q. You were trustee for the bondholders?

A. For the bondholders.

Q. And as such held title to these cars?

A. Certainly.

Q. Did you make any contract with the receiver for the use of the cars, either with Dwight or with Craig?

A. I don't remember that we entered into any definite contract;

he took them and used them while he was receiver and we looked to the court for compensation.

Q. Do you know as a matter of fact, or did you know at the time, what proportion of the cars on the line were used by the
123 receiver? Did you know as a matter of fact?

A. No; except so far as we could get from the records of the receivership.

Q. Did you know, as a matter of fact, that the receiver did not need the cars—that number of cars—for the business he was doing? Did you know anything about that?

A. No. I did not know anything about that.

Q. Did you at any time make an application yourself to the court for payment for the use of these cars?

A. My impression is that bills had been made up by Mr. Chapman, who has been managing the Boston car trusts, including A, B, C, D, and E, representing all the rolling stock; that bills have been made up for the master and an exact account has been rendered, but we have received no money yet.

Q. You are tolerably well acquainted with the system of narrow-gauge roads in the United States?

A. I made somewhat a study of the subject at the time.

Q. In addition to or exclusive of the Toledo, Cincinnati & St. Louis and the branches of which we have spoken, what other narrow-gauge roads were there that could be run in connection with that system?

A. From St. Louis to Cairo there was a road already built, and from Cairo to Corsicana, Texas, there was one being built, with the intention of going to Laredo and from Laredo to the city of Mexico; the Mexican National was being built, and of these two lines, the one from Cairo to Laredo and from Laredo to the city of Mexico, a large part of it was built.

Q. Do you know, as a matter of fact, whether about the time that this road got into difficulty, somewhere about that time,
124 the public began to lose a little confidence in narrow-gauge roads—that is to say, there was not the same interest felt in their construction that there had been theretofore?

All this line of examination objected to as incompetent and irrelevant.

A. As a matter of fact, the public not only were losing confidence in all new railroads, and they all went down together.

Q. Is it not a fact that narrow-gauge rolling stock has been constantly decreasing in price for three years?

A. Well, as to that, certain roads have been built and are being built now, narrow gauge, in the South; in fact, I have just been talking with a man who owns one hundred miles of road in the South, narrow gauge, and he likes it better than standard gauge, and is buying narrow-gauge rolling stock to-day and equipping it fully, and is very much pleased with his investment; that is Mr. Browning, who has quite a system in the South.

Q. Aside from that, isn't it a fact that narrow-gauge rolling stock has been decreasing in value?

A. There not being so many roads to be supplied with narrow-gauge stock it may not have quite as much marketable value perhaps as standard, but they are buying them all the time and paying full prices for them.

Q. Do you know what roads you could have leased this rolling stock to during the years 1884 and 1885 if it had not been retained? Do you happen to know any other road that would have leased it?

A. I don't know of any specially, although they were
125 having applications from small roads in various parts of the country—Texas and in the South and the extreme West; they have been leased since.

GEO. WM. BALLOU.

Subscribed and sworn to before me this tenth of April, 1886.
[SEAL.] B. MOYNAHAN,
Notary Public (77), *N. Y. Co.*

STATE OF NEW YORK,
City and County of New York, } ss:

I, James A. Flack, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that B. Moynahan, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State and for general purposes; that I am well acquainted with the handwriting of such notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 12 April, 1886.

JAMES A. FLACK, *Clerk.* [SEAL.]

126 Depositions of witnesses produced, affirmed, and examined before me the 17th day of February, A. D. 1886, at the office of the Middletown Car Works, Middletown, Penna., between the hours of 8 o'clock a. m. and 6 o'clok p. m., by virtue of the notice hereto attached for the examination of witnesses on behalf of George William Ballou, intervening petitioner in certain cases pending in the circuit court of the United States for the district of Indiana, entitled The Central Trust Company of New York *vs.* The Toledo, Delphos and Burlington R. R. Co., The Central Trust Company of New York *vs.* The Toledo, Cincinnati and St. Louis R. R. Co.

ARTHUR KING, being produced, affirmed, and examined by Mr. E. R. CHAPMAN, of counsel for the intervening petitioner, deposeth as follows:

Q. Where do you reside?

A. My residence is in York, York county, Pa.

Q. Please state your business and the time you have been engaged therein.

A. Car manufacturer; engaged in business in Middletown, Dauphin county, Pa., as one of the firm of Schall & King, proprietors of the Middletown Car Works, since the latter part of the year 1879.

Q. Please state what, if any, and when you manufactured any rolling stock for use on the Toledo, Delphos and Burlington Railroad Company.

A. We manufactured for the use of the Toledo, Delphos and Burlington R. R. Co. two hundred and ten (210) eight-wheeled box cars and one hundred (100) eight-wheeled flat cars and fifty set, making one hundred, four-wheeled transfer trucks during
127 the latter part of the year 1880 and the early months of 1881.

Q. Were the one hundred transfer trucks shipped by you; if so, to whom were they consigned? Also please give the dates of shipment, and cars on which shipped, with the carrier by whom shipped.

A. They were shipped by us, consigned to the Toledo, Delphos & Burlington R. R. Co., care of I. H. Burgoon, Delphos, Ohio, as follows:

Nov. 2nd, 1880, two trucks, marked No. 2137, B. C. T., series A.
Dec. 23d, 1880, four " " Nos. 2138 & 2139, B. C. T., series A.
Jan'y 11, 1881, ten trucks, marked Nos. 2140 to 2144, B. C. T., series A.
Jan'y 18, 1881, ten trucks, marked Nos. 2145 to 2149, inc., B. C. T., series A.
Jan'y 19, 1881, fifteen trucks, marked Nos. 2150 to 2157, inc., B. C. T., series A.
Jan'y 20, 1881, ten trucks, marked Nos. 2157 to 2162, inc., B. C. T., series A.
Jan'y 22, 1881, twenty-four trucks, marked Nos. 2162 to 2174, inc., B. C. T., series A.
Jan'y 26, 1881, thirteen trucks, marked Nos. 2174 to 2180, inc., B. C. T., series A.
Jan'y 27, 1881, twelve trucks, marked Nos. 2181 to 2186, inc., B. C. T., series A.

Shipments were made on cars of Penna. R. R. Co. as follows:

Shipment of	Nov. 2d	on cars	No. 5246.
"	Dec. 23	"	Nos. 7296, 15184, 15586.
"	Jan. 11	"	Nos. 9592, 16603.
"	Jan. 18	"	Nos. 6166, 14936.
"	Jan. 19	"	Nos. 17224, 17331, 17166.
"	Jan. 20	"	Nos. 17066, 17022.
"	Jan. 22	"	Nos. 5164, 17205.
"	Jan. 26	"	No. 5963.
"	Jan. 27	"	No. 15672.

Q. Was there other rolling stock besides transfer trucks shipped on the cars referred to?

128 A. There was on some of them.

Q. Please give the details for each shipment—that is, the rolling stock loaded on the cars of the Penna. R. R. Co. you have just named.

A. Shipment of Nov. 2nd, 1880, on Pa. R. R., car No. 5246, one narrow-gauge box car and two transfer trucks.

On shipment of Dec. 23, 1880, on Pa. R. R., cars Nos. 7296, 15184, 15586, three narrow gauge box cars and four transfer trucks.

On shipment of Jan'y 11th, 1881, on cars Nos. 9592, 16603, two narrow-gauge box cars and ten transfer trucks.

On shipment of Jan'y 18th, 1881, cars Nos. 6166, 14936, two narrow-gauge box cars and ten transfer trucks.

On shipment of Jan'y 19th, 1881, cars Nos. 17224, 17331, 17166, three narrow-gauge box cars and fifteen transfer trucks.

On shipment of Jan'y 20th, 1881, cars Nos. 17066, 17022, two narrow-gauge box cars and ten transfer trucks.

On shipment of Jan'y 22d, 1881, cars Nos. 5164, 17205, twenty-four transfer trucks.

On shipment of Jan'y 26th, 1881, on car No. 5963, thirteen transfer trucks.

On shipment of Jan'y 27th, 1881, on car No. 15672, twelve transfer trucks.

Q. How are these transfer trucks numbered?

A. From Nos. 2137 to 2186, inc., two trucks, constituting a pair and being marked with the same number.

Q. How were they loaded?

A. In some instances, I think, by loading transfer trucks inside of the narrow-gauge box cars. One of our employees, Robert

129 Hickernell, can give more definite information about it.

Q. Have you the bills of lading received from the Pa. R. R. on account of the shipment referred to?

A. The original bills of lading were forwarded to the purchaser when the shipments were made. I have duplicates, however, of such bills of lading.

Q. Will you submit such duplicates and make them a part of your deposition?

A. I will.

"Counsel for the intervening petitioner offers in evidence the duplicate bills of lading, showing the shipment by Schall & King of one hundred transfer trucks, and they are hereby annexed, marked by the notary public Exhibits A, B, C, D, E, F, G, H, I, inc."

Q. Mr. King, will you be kind enough to state the value or selling price of narrow-gauge box cars, flat cars, and transfer trucks during the latter part of 1880 and first part of 1881?

A. Narrow-gauge box cars at that time, similar to those furnished to the Toledo, Delphos & Burlington R. R., from four hundred to four hundred and thirty-five dollars ($400 to $435); flat cars, from three hundred to three hundred and twenty-five dollars ($300 to

$325); transfer trucks, from two hundred and twenty-five to two hundred and thirty-five dollars ($225 to $235).

Q. As a car-builder, what, in your opinion, would be the proper course to pursue in determining the rental value of transfer trucks? In other words, if you were about to make a lease of transfer trucks to a railroad company, what would you deem a proper basis for fixing the rental?

130 A. I should think the rental of a pair of transfer trucks should bear the same ratio to the amount of rental of a complete car as does the cost of a pair of transfer trucks *does* to the cost of a complete car.

ARTHUR KING.

Affirmed and subscribed before me the 17th day of February, A. D. 1886.

WM. A. CROLL, [SEAL.]
Notary Public.

COMMONWEALTH OF PENNSYLVANIA, } ss:
Dauphin County, }

I, Wm. H. Ulrich, prothonotary of the court of common pleas of Dauphin county, do hereby certify that Wm. A. Croll, Esquire, is an acting notary public in said county and State, duly commissioned and qualified and authorized by law to administer oaths, take acknowledgments of deeds, &c., and that his commission is for a period of three years, commencing Jan'y 20, 1885.

Witness my hand and the seal of said court, at Harrisburg, this 18 day of February, A. D. 1886.

W. H. ULRICH, *Prothonotary.* [SEAL.]

131 EXHIBIT A. Wm. A. Croll, N. P.

Duplicate.

PENNSYLVANIA RAILROAD COMPANY,
MIDDLETOWN, PA., STATION, *Jan'y* 27, 1881.

Received of Middletown Car W'ks 6 p'rs car trucks, Nos. 2181 *in* to 2186, in., consigned to Toledo, Delphos & Burlington R. R. Co., c. o. J. H. Berger, Delphos, Ohio, marked "loaded by shippers;" the P. R. R. Co. not accountable for number or condition of pieces; to be transported to and delivered at the regular freight station of the company at P'gh, transfer to —— or order, upon the terms and according to the agreement as specified on the back of this receipt.

S. S. CLAIR, *Agent.*

EXHIBIT B. Wm. A. Croll, N. P.

Duplicate.

PENNSYLVANIA RAILROAD COMPANY,
MIDDLETOWN, PA., STATION, *Jan'y* 26, 1881.

Received of Middletown Car W'ks 6½ p'rs car trucks, Nos. 2174½

in to 2180, in., on car 5963, consigned to Toledo, Delphos & Burlington R. R. Co., c. o. J. H. Berger, Delphos, Ohio, marked "loaded by shippers;" the P. R. R. Co. not accountable for number or condition of pieces; to be transported to and delivered at the regular freight station of the company at P'gh, transfer to —— or order, upon the terms and according to the agreement as specified on the back of this receipt.

S. S. CLAIR, *Agent.*

EXHIBIT C. Wm. A. Croll, N. P., Feb'y 17, '86.

Duplicate.

PENNSYLVANIA RAILROAD COMPANY,
MIDDLETOWN, PA., STATION, *Jan'y* 22, 1885.

Received of Middletown Car W'ks 12 p'rs car trucks, Nos.
132 2162½ *in* to 2173½, in., on car- 5164, 17205, consigned to Toledo, Delphos & Burlington R. R. Co., c. o. H. Berger, Delphos, Ohio, marked "loaded by shippers;" the P. R. R. Co. not accountable for number or condition of pieces; to be transported to and delivered at the regular freight station of the company at P'gh, transfer to —— or order, upon the terms and according to the agreement specified on the back of this receipt.

S. S. CLAIR, *Agent.*

EXHIBIT D. Wm. A. Croll, N. P.

Duplicate.

PENNSYLVANIA RAILROAD COMPANY,
MIDDLETOWN, PA., STATION, *Jan'y* 20, 1881.

Received of Middletown Car W'ks 2 N. J. box cars, 5 p'rs car trucks, Nos. 2157½ *in* to 2161½, in., on cars 17066, 17022, consigned to Toledo, Delphos & Burlington R. R. Co., c. o. J. H. Berger, Delphos, Ohio, marked "loaded by shippers;" the P. R. R. Co. not accountable for number or condition of pieces; to be transported to and delivered at the regular freight station of the company at P'gh, transfer to —— or order, upon the terms and according to the agreement as specified on the back of this receipt.

S. S. CLAIR, *Agent.*

EXHIBIT E. Wm. A. Croll, N. P.

Duplicate.

MIDDLETOWN, PA., STATION, *Jan'y* 19, 1881.

Received of Middletown Car Wk's 3 N. J. box cars, 7½ p'rs car trucks, Nos. 17224–17331, 17166, consigned to Toledo, Delphos & Burlington R. R. Co., c. o. J. H. Berger, Delphos, Ohio, marked "loaded by shippers;" the P. R. R. Co. not accountable for number

or condition of pieces; to be transported to and delivered at
133 the regular freight station of the company at P'gh, transfer to —— or order, upon the terms and according to the agreement as specified on the back of this receipt.

S. S. CLAIR, *Agent.*

EXHIBIT F. Wm. A. Croll, N. P.

Duplicate.

PENNSYLVANIA RAILROAD COMPANY,
MIDDLETOWN, PA., STATION, *Jan'y* 18, 1881.

Received of Middletown Car W'ks 2 N. J. box cars, 5 p'rs car trucks, Nos. 2145 *in* to 2149, in., on cars 6166, 14936, consigned to Toledo, Delphos & Burlington R. R. Co., c. o. J. H. Berger, Delphos, Ohio, marked "loaded by shippers;" the P. R. R. Co. not accountable for number or condition of pieces; to be transported to and delivered at the regular freight station of the company at P'gh, transfer to —— or order, upon the terms and according to the agreement as specified on the back of this receipt.

S. S. CLAIR, *Agent.*

EXHIBIT G. Wm. A. Croll, N. P.

Duplicate.

PENNSYLVANIA RAILROAD COMPANY,
MIDDLETOWN, PA., STATION, *Jan'y* 11, 1881.

Received of Middletown Car W'ks 2 | 8 N. J. box cars, 5 p'rs car trucks, Nos. 2140 to 2144, in., on cars 9592, 16603, consigned to Toledo, Delphos & Burlington R. R. Co., c. o. J. H. Berger, Delphos, Ohio, marked "loaded by shippers;" the P. R. R. Co. not accountable for number or condition of pieces; to be transported to and delivered at the regular freight station of the company at P'gh,
134 transfer to —— or order, upon the terms and according to the agreement as specified on the back of this receipt.

S. S. CLAIR, *Agent.*

EXHIBIT H. Wm. A. Croll, N. P. Feb'y 17, '86.

Duplicate.

PENNSYLVANIA RAILROAD COMPANY,
MIDDLETOWN, PA., STATION, *Dec.* 23, 1880.

Received of Middletown Car W'ks 3 N. G. box cars, 2 p'rs car trucks, Nos. 2138 and 2139, on cars 7296, 15184, 15586, consigned to Toledo, Delphos & Burlington R. R. Co., J. H. Berger, Delphos, Ohio, marked "loaded by shippers;" the P. R. R. Co. not accountable for number or condition of pieces; to be transported to and delivered at the regular freight station of the company at P'gh, transfer to —— or order, upon the terms and according to the agreement as specified on the back of this receipt.

S. S. CLAIR, *Agent.*

EXHIBIT I. Wm. A. Croll, N. P.

Duplicate.

PENNSYLVANIA RAILROAD COMPANY,
MIDDLETOWN, PA., STATION, *Nov.* 2, 1880.

Received of Middleton Car W'ks 1 N. G. box car, 1 p'r car trucks, No. 2137, on car No. 5246, consigned to Toledo, Delphos & Burlington R. R. Co., c. o. J. H. Berger, Delphos, Ohio, marked "loaded by shippers;" the P. R. R. Co. not accountable for number or condition of pieces; to be transported to and delivered at the regular freight station of the company at P'gh, transfer to —— or order, upon the terms and according to the agreement as specified on the back of this receipt.

S. S. CLAIR, *Agent.*

135 Depositions of witnesses taken by consent in the above-entitled cases respectively on behalf of the intervening petitioner, G. W. Ballou, trustee, at the office of Irvine and Craig, rooms No. 51 and 52, Produce Exchange building, corner of Madison and St. Clair streets, in the city of Toledo, Lucas county, Ohio, on the 6th day of March, 1886, at 10 o'clock a. m.

Present: For intervening petitioner, James Irvine; for complainants, James M. Quigley and others; bondholders' committee, Clarence Brown.

STATE OF OHIO, *County of Lucas,* } *ss:*

Be it remembered that on the 6th day of March, in the year of our Lord one thousand eight hundred and sixty-eight, I, Clement Carpenter, a notary public in and for the State and county aforesaid, and duly commissioned and qualified under the laws of the United States to take depositions for use in the circuit courts of the United States, call- and cause- to be and personally appear before me, at the office of Irvine and Craig, rooms 51 and 52, in the Produce Exchange building, on the corner of Madison and St. Clair streets, in the city of Toledo, county of Lucas, in the said northern district of Ohio, in the State aforesaid, Henry Smith, John Halley, John Sheehy, and Evan Evans, to testify and the truth to say on the part and behalf of the intervening petitioner, the defendant, G. W. Ballou, in two certain suits or matters of controversy, in the one in which The Central Trust Company of New York is complainant and The Toledo,
Delphos, and Burlington Railroad Company is defendant, and
136 in the other of said suits or matters of controversy The Central Trust Company of New York is complainant and The Toledo, Cincinnati and St. Louis Railroad Company is defendant.

HENRY SMITH, being about the age of 50 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the respective matters of controversy aforesaid, I did carefully examine the said Henry Smith, and he did thereupon depose, testify, and say as follows upon interrogatories proposed by JAMES IRVINE, Esq., viz:

Q. Mr. Smith, state your name, age, residence, and occupation.

A. My name is Henry Smith; I am 50 years of age, and my residence is on Lagrage street, Toledo, Ohio; I am a tally man at the Canada Southern Junction and I am in the employ of the T., C. and St. Louis railroad.

Q. What are your duties?

A. Transferring freight.

Q. Do you work at the Ramsey transfer?

A. Some, and some in the transfer freight-house.

Q. How many narrow-gauge transfer trucks are there there, Mr. Smith?

A. I don't know; I cannot tell.

Q. How frequently are those that are there used—the transfer trucks?

A. The narrow-gauge? This wet weather there ain't been used many of them. Now there are used 6 or 8 a week; ten of them sometimes—that is, at the present time.

Q. Do you know how many there are out now on the road?

A. I should think about 16 or 18 trucks out now.

Q. Then when you say you used 6 or 8 or ten a week what do you mean by that?

A. That many cars a week.

137 Q. How many does it take—two trucks to each car?

A. Yes, sir.

Q. How long are the cars generally out, on an average?

A. I cannot tell about that; sometimes they are out two days, sometimes out two weeks.

Q. How long have you been working at the Ramsey transfer?

A. About four years.

Q. Have any of the trucks that were originally put there been taken away?

A. No; none of the narrow gauge; don't think any taken away that I remember of.

Q. Are there just as many there now as there was when you first went there?

A. Yes, sir.

Q. Do you recollect when Mr. Dwight was appointed receiver?

A. No, sir.

Q. Have those trucks been used right along every week since you have been there?

A. Yes, sir.

Q. Some weeks more, some less, but always in use?

A. Always more or less.

Q. Do you know the different kind of trucks—the different makes?

A. No, sir.

Cross-examination by Mr. BROWN:

Q. You were working there in August, 1883, were you?

A. Yes, sir.

Q. Are there as many trucks there now as there were in August, 1883?

A. I think so; I don't remember of any being taken away.

138 Q. Were any trucks received there while you were working there?

A. No narrow-gauge trucks.

Q. You have been working there four years?

A. Very soon now—four years next month.

Q. And during that time no new narrow-gauge trucks have been received?

A. No, sir.

Q. Then you don't know when those trucks came there nor where they came from?

A. No, sir.

Q. About how many trucks have been there on the road since August *1st*, 1883?

A. I could not tell without counting them.

Q. Can you tell about how many?

A. 30 or 40 pair, probably, more or less.

Q. Were there some narrow-gauge trucks there that were not used at all?

A. Yes, sir,

Q. Where are they?

A. There yet.

Q. Have they been standing idle all the time since you have been at work there?

A. Yes, sir.

Q. Standing there on the commons side of the freight-house?

—. ——.

Q. On the track?

A. All except one or two pair; two pair, I guess.

Q. On what track are the rest of them not in use?

A. Standing on the ground; two pair, I think, were on the ground.

Q. About how many pairs are standing on the track not in use now?

139 A. I don't know.

Q. Can you tell about how many?

A. No, sir; some are that ain't fit to use; all that we don't use; the rest we take just as they come.

Q. Then there are some that have not been used since you was there because not fit to use?

A. Different kind of trucks.

Q. Are there some good trucks there that never have been used at all?

A. Yes, sir—no, sir; no good trucks there that have never been used, except one or two pair of different build.

Q. Do you know whose make those trucks are?

A. No, sir.

Q. Now where are the rest of those trucks that were never used—on what track?

A. On the track made purpose to put trucks on.

Q. On the storage track?

A. Yes, sir.

Q. Why are those not used?

A. Which ones?

Q. Those on the tracks.

A. Not in repair.

Q. Do you know whose make they are?

A. No, sir.

Q. You work at the Canada Southern Junction?

A. Yes, sir.

Q. And during what hours of the day are you there?

A. From seven in the morning to six in the evening, generally.

Q. Do you know whether there are any other trucks on the line of the road inside of the city of Toledo?

A. No; I don't know.

140 Re-examination:

Q. You say there are two pairs of good trucks standing on the ground?

A. One or two pairs; one is on the track with the rest of them; one off the track on the ground.

Q. Do you know why they were not used?

A. They were of different build.

Q. Is that the only reason?

A. I suppose so; they was there when I went there; never have been moved since I have been there. I don't know what reason.

Q. Now, you say there was some other trucks there outside of this one or two pair not used because not fit to use?

A. Yes, sir.

Q. And are there some other trucks there not used because out of repair?

A. Yes, sir.

Q. Do you mean to be understood that when trucks come in out of repair they did not put them in repair but used other trucks which were not in repair?

A. Yes, sir.

Recross-examination:

Q. What marks or letters are there on these two trucks that are of different build?

A. I never looked; that is the man that can tell you about the trucks. (Witness here pointed at Mr. John Halley.)

Also JOHN HALLEY, of Lucas county, Ohio, being about the age of 45 years; and, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in
141 the respective matters of controversy aforesaid, I did carefully examine the said John Halley, and he did thereupon depose, testify, and say as follows upon interrogatories propounded by JAMES IRVINE, Esq., viz:

Q. Now, state your name, age, residence, and occupation.
A. I am 45 years of age; my residence is West Broadway, Toledo, Ohio. I am by occupation a laborer.
Q. Who do you labor for, Mr. Halley?
A. For the Toledo, Cincinnati and St. Louis railroad.
Q. At what?
A. Transferring.
Q. Do you work at the Ramsey transfer?
A. Yes, sir.
Q. Who is the boss at the Ramsey transfer?
A. Smith is the only boss now. I used to have that job myself; I work there yet. I had the job until about one year ago, as boss.
Q. Now, Mr. Halley, how many of narrow-gauge transfer trucks are there there?
A. I cannot tell you. I never counted them.
Q. About how many are in use, Mr. Halley, generally?
A. Just about the same as Smith said—an average of eight or ten a week.
Q. How many trucks on the road now?
A. 10 or 12.
Q. Cars or trucks?
A. Cars, I think; I cannot say for true. I think about that.
Q. Is business ever any brisker than now?
A. Yes, sir.
Q. Is it also duller than now?
A. Not much duller than now; it is about as dull as I ever saw it.
142 Q. Well, do you recollect any lettering or numbering on the trucks out there?
A. No, sir.
Q. Do you know, Mr. Halley, how many of these trucks are not in use?
A. I cannot tell you how many. A good many are not fit to use.
Q. Why?
A. Something has been broke on them boxes for the want of brasses, so far as I can see.
Q. Do you know anything about this one or two pair of trucks Smith spoke of on the ground?
A. I have seen them.
Q. Why did not you use them?
A. Not fit to use; not the right kind, as far as I can understand.
Q. How long have you been working there, Mr. Halley?
A. About five years.

Q. Were you there when the trucks came there?
A. Yes, sir.
Q. Have you received any new trucks since those originally came there?
A. Not to my knowledge. I never took notice of new trucks coming there.
Q. Have any been taken away?
A. Not as ever I seen.
Q. Have you ever noticed any of these transfer trucks under freight cars?
A. No, sir.

Cross-examination by Mr. BROWN:

Q. Were these two trucks that were of different make in good repair?
143 A. I cannot tell. I am no car-repairer.
Q. Were they never used at all?
A. No, sir.
Q. Do you know whose make they are?
A. No, sir; I do not.
Q. Do you know marks on them—letters?
A. No, sir; to remember them, never; I do not.
Q. Do you keep any books of record?
A. Not for the last twelve months.
Q. Did you keep any before that time?
A. I kept record of just what was done, as many as were used each day, but no record of kind or number of trucks.
Q. Where is that record?
A. I guess it is destroyed now.
Q. Where was it when you last saw it?
A. It was, I guess, with some of the books in Mr. Warring's office. I don't know whether he has it or not.
Q. Who kept the record?
A. I kept a record of the transfers. I don't know nothing about the trucks.
Q. This record you speak of, did you keep it yourself?
A. Yes, sir.
Q. What did you do with it?
A. I suppose Warring has it. It was just for my own accommodation that I kept it. When I got through with this record I gave it to Mr. Warring and I guess he has had it since.
Q. Did you keep any record of the trucks that you receive there?
A. No, sir: I have nothing to do with trucks at all. I got such a car for transfer, and that is all I had to look to.
Q. Do you know whether there are any other trucks along
144 the line of the road besides those you have been using here?
A. No, sir.
Q. Were the two trucks that were not used in good repair?
A. I don't know, sir.

Also JOHN SHEEHY, of Lucas county, State of Ohio, being about the age of 50 years; and, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the respective matters of controversy aforesaid, I did carefully examine the said John Sheehy, and he did thereupon depose, testify, and say as follows upon interrogatories proposed by JAMES IRVINE, Esq.:

Q. Give us your name, age, residence, and occupation.

A. John Sheehy; age, 30 years; residence, Toledo; occupation, car-repairer for the Toledo, Cincinnati and St. Louis railroad.

Q. How long have you been car-repairer for that road here?

A. About 5 years; 4 years eight or nine months.

Q. Do you know anything about those narrow-gauge transfer trucks that we are talking about?

A. I have seen them there.

Q. Did you ever repair any of them?

A. Yes, sir.

Q. How recently?

A. Generally when they needed brasses and bolts on them.

Q. How recently have you done repairs to them?

A. Some every day; two or three hours a day sometimes.

Q. Do you know how many trucks there are out there?

A. I don't know now. I have counted them several times. I don't know now.

Q. About how many, as near as you can recollect?

A. Between 60 and 70 trucks there.

145 Q. Are there any entirely out of repair there—unfit to use?

A. There is a good many.

Q. How many are in that condition?

A. I cannot say.

Q. What is the matter with them?

A. Different things; some oil-boxes, some brasses out of repairs.

Q. Why were they not repaired up?

A. Didn't need them.

Q. Are there any of those narrow-gauge transfer trucks around this city or on the line of that road, except those at the transfer?

A. Not that I know of.

Q. Have you ever known any of these trucks to be used in repairing cars—other cars?

A. No, sir.

Q. None of that been done here?

A. None of that been done that I know of.

Q. Have you known of any of the pairs being taken of these trucks to repair trucks under other cars?

A. Not that I know of.

Cross-examination by Mr. BROWN:

Q. The 60 or 70 trucks include those out of repair?

A. It includes all of them.

Q. About how many are there in use?

A. There may be about 40 we could use right along if we wanted them. We don't need them.

Q. Then perhaps half of the trucks are in daily use?

A. Sometimes more than half.

Q. About how many do you use on the average each week?

146 A. I could not tell. I never pay much attention to that business. There is a difference in trucks. The C. H. line, when we have got to change those trucks from one to the other, sometimes we don't use them; they have different center plates; some of them we don't use.

Q. You are speaking of narrow-gauge trucks?

A. Yes, sir.

Q. How long have you been at work there?

A. I was the first car-repairer ever there. Since the trucks came there I was there. I then came down in the lower yard and had nothing to do with that for two or three years. Now I am back again.

Q. Were you at work there when the trucks were received?

A. I was working there before the Ramsey trucks came.

Q. Do you remember how many parts of trucks were received there?

A. I don't know.

Q. Where were you working in August, 1883? Do you remember?

A. In the lower yard.

Q. But you had nothing to do with the trucks then?

A. No.

Q. About how long ago did you go back to work at the transfer?

A. One year last January.

Q. That is January, 1885?

A. Yes, sir.

Q. How many trucks have been in use on the average since January, 1885?

A. Well, a good part of the time we did not use them at all. Then we may use ten pair a week, and then sometimes 6. Perhaps ten days not use any, and then on an average 10 or 12 cars a week.

147 Q. Do you know what marks or letters these trucks had on them?

A. Some of them had "D" and "S" and "E."

Q. What other letters or marks did any of them have, Mr. Sheehy?

A. Some of them had B. E. T.

Q. How many of that kind?

A. I could not tell. Sometimes letters on some of them; series marked on some of them. I do not remember what letter.

Q. Do you know whether those marked B. C. T. had series mark on them too?

A. I don't know.

Q. Do you know what marks there are on the two trucks that are not used?

A. I don't know. I never looked at them particularly.

Q. Why were they not used, Mr. Sheehy?

A. One of them got off of the end of the track. When we wanted to use it it was froze in and we could not get it out.

(Mr. Irvine here paid the witnesses one dollar each—three dollars in all.)

By agreement the further taking of depositions was here adjourned to Tuesday, March 9th, 9 a. m., at the same place.

TUESDAY, *March 9th*, 1886—9 a. m.

Pursuant to last adjournment the taking of depositions on behalf of said intervening petitioner was resumed in the presence of the same counsel as before, and the following proceedings were then had and at the same place, to wit:

Also EVAN EVANS, of Henry county, Ohio, being about the age of 44 years; and, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the
148 respective matters of controversy aforesaid, I did carefully examine the said Evan Evans and he did thereupon depose, testify, and say as follows upon interrogatories proposed by JAMES IRVINE, Esq., viz:

Q. State your name, age, residence, and occupation.

A. My name is Evan Evans; I reside in Holgate, Henry county, Ohio; my age is 44 years, and my occupation running transfer; I am foreman of the transfer, in the employ of the Baltimore and Ohio railroad and the narrow gauge, the Toledo, Cincinnati and St. Louis railroad.

Q. How long have you been engaged in that employment there?

A. I have been running it two years in June; a year ago the 27th of last June.

Q. If I understand, you are engaged in transferring by means of the Ramsey transfer bodies of the standard-gauge cars of the Baltimore and Ohio Railroad Company on the narrow-gauge transfer trucks, so that these bodies can be run on the Toledo, Cincinnati and St. Louis narrow-gauge road, and when they are loaded returned by means of the transfer onto the standard-gauge Baltimore and Ohio trucks again?

A. Yes, sir.

Q. How many of these transfer trucks are there at Holgate, Mr. Evans?

A. There is 58.

Q. You may use to refresh your memory any memorandum you have made.

A. 58 there altogether and what is out under the Baltimore and Ohio cars; 58 altogether.

Q. How frequently do you use these trucks?

A. Well, sometimes we put over 8 or 10 in one day; then the other times one or two at a time. Twice since I have been — they have all been out.

149 Q. The whole 58?

A. Yes, sir; and at other times all have been in.

Q. Have these trucks any marks or letters or numbers to designate them?

A. Part of them has; part of them the bolts have been broke, and the mark was never put on.

Q. How many of them have marks or numbers designating them?

A. 11 of series "A" has got no mark; series A 22 has got the marks and the numbers on them, D, S, and E, and 4 has got numbers on them, D, S, and E; 3 have no numbers; 18 is out on the road.

Q. Which series?

A. I cannot tell whether series A or D S or what they are. Well, I put two under narrow-gauge cars and loaded the old ones in the cars and sent them to Delphos.

Q. Of those two that were not put under narrow-gauge cars, what kind of trucks were they?

A. I think series "A." I won't be positive. I sent four to Delphos shops. They were broken so I could not use them.

Q. When did you put these two under narrow-gauge cars?

A. About one year ago. One of them may be a little over a year; the other one, I think, was last spring.

Q. When did you send this four to Delphos for repairs?

A. Well, that was last spring some time. Mr. Roberts told me I might as well send them up to the Delphos shops; they might be of some good to them there,

Q. Who is this Mr. Robertson?

A. He is the master mechanic.

Q. How can you tell that these 11 trucks that are without numbers are in fact series A trucks?

A. They look like it—that is, some. There ain't much
150 difference in them now; bolts put on them and some figures rubbed off, so — cannot tell what they are.

Q. How did you tell the difference between series A and D, and S. E. transfer truck?

A. They are marked, and then series D and S is different kind of truck; there are more fixtures on them; the wheels are different.

Cross-examination by Mr. BROWN:

Q. These statements you have made of the kinds and numbers of trucks now at Holgate are based upon examinations made by you recently, are they?

A. Yes, sir.

Q. When did you make that examination?

A. I made it last Sunday.

Q. Are you able from the examination you have made to give a complete list of all the trucks by series, designation, and number that have been at the Holgate transfer since the time you have been in charge?

A. I cannot now, for want of time. I cannot until I see them,

and I cannot *so* it then on some of them, because there are no numbers on them.

Q. Will you prepare and furnish the notary with a full and complete list of all the trucks now or heretofore in use by you at that point showing marks and numbers so far as possible, and also number of trucks having no numbers?

A. Well, I will as soon as I can return to Holgate and prepare the same.

151 *Number of Narrow-Guage Trucks at Holgate.*

Series A.	Series D, S, and E with numbers.	
2094.		70
2089.		67
2167.		76
2122.		68
2179.		
2170.	Series D, S, and E without numbers.	
2145.		6
2132.		—
2173.	Total	10
2172.		
2076.		
2086.		
2096.		
2176.		
2152.		
2081.		
2128.		
2175.		
2092.		
2110.		
2184.		
2090.		
2159.		
2105.		
2037.		
2073.		
2142.		
2166.		

152

2139.
2160.
2082.

Total with numbers, 31.
" of series "A" trucks without numbers, 17.
Entire number of series "A" trucks, 48.
Entire number of trucks at Holgate, Ohio, 58.

EVAN EVANS, *Transfer.*

It is hereby stipulated that the foregoing shall be taken as the statement furnished by Evan Evans as to transfer trucks at Holgate, Ohio, showing numbers and marks thereon. The master shall consider the above the same as if said Evans had been duly examined and testified to the same.

Toledo, Ohio, June 10th, 1886.

CLARENCE BROWN,
Solicitor for Quigley et al., Comp'ts.
JAS. IRVINE,
Att'y for Petitioners.

153 *Statement of Narrow Guage Trucks at C. S. Junction (Toledo) for Use in Running Standard Cars Over T., C. and St. L. R'y.*

No. of truck.	Series.	
2168.	B. C. T., series A.	
51.	D. & S. E. truck.	
2106.	B. C. T., series A.	
2087.	" "	
2099.	" "	
2155.	" "	
2116.	" "	
No number.	Barney and Smith make.	
2147.	B. C. T., series "A."	
2162.	" "	
2040.	" "	
2088.	" "	
No number.	Lobdell wheels.	
80.	D. and S. E. truck.	
2129.	B. C. T., series A.	
52.	D. and S. E. truck.	
43.	" "	
No number.	Whitney & Son, Philad., wheels.	
No number.	Barney & Smith make.	
2071.	B. C. T., series E.	
No number.	Barney & Smith make.	
2195.	B. C. T., series A.	
No number.	Lobdell wheels.	
No number.	Whitney & Son wheels.	
"	" "	
54.	D. & S. E.	
2067.	B. C. T., series A.	
No number.	B. C. T., series M.	

154

No number.	B. C. T., series M.	
"	Barney & Smith truck.	
2183.	B. C. T., series A.	All in bad order; not in service for over one year.
2181.	B. C. T., series A (only frame, no wheels).	
2186.	B. C. T., series A.	

No number.	Lobdell wheels.
2063.	B. C. T., series A.
2114.	" "
2038.	" "
2181.	" "
No number.	Lobdell wheels.
2172.	B. C. T., series A.
2072.	" "
2174.	B. C. T., series A.
2064.	" "
2171.	" "
No number.	Barney & Smith make.
2119.	B. C. T., series A.
2138.	" "
2149.	" "
2171.	" "
2115.	" obliterated.
2999.	" series A.
2158.	" "
2061.	" "
2107.	" "
2085.	" "
No number.	Lobdell Car Wheels Company wheels.
"	" " " "
54.	D. and S. E.
79.	" "
64.	" "
155	
No number.	Barney & Smith make.
"	Whitney & Son wheels.
"	" " "
2075.	B. C. T., series A.
No number.	Barney & Smith make.
2168.	B. C. T., series A.
2148.	" "
2118.	" "
No number.	Barney & Smith make.
2118.	B. C. T., series A.
No number.	Lobdell Car Wheel Company wheels.
2046.	B. C. T., series A.
2165.	" "

Clarence Brown, Esq.

DEAR SIR: This is complete list of N. G. trucks at C. S. June. You will notice a large number of them that are in bad order and have not been in service. There *is* also several numbers that are duplicated.

Toledo, Ohio, April 2d, 1886.

Yours truly, J. A. WARING, *Ag't.*

It is hereby stipulated that the foregoing shall be taken as the statement of J. A. Waring as to transfer trucks at Canada Southern Junction, Toledo, Ohio, showing numbers and marks thereon. The said master shall consider the above the same as if said J. A. Waring had been duly examined and testified to the same.

Toledo, Ohio, June 10th, 1886.

CLARENCE BROWN,
Sol'r for Quigley et al., Complainants.
JAMES IRVINE,
Att'y for Petitioner.

156 *The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer.*

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
August 3	28817	N. Y., L. E. & W.	August 13, 1883	
" "	5161	D. L.	" 11, "	
" "	28183	W. E. D.	" 13, "	
" "	11133	C., S. L.	October 1, "	
" "	11312	C., S. L.	Sept. 12, "	
" "	14598	C., S. L.	August 31, "	
" "	14617	C., S. L.	August 31, "	
August 4	34162	E. N. S.	Sept. 5, "	
" "	24329	E. N. S.	August 24, "	
" "	25010	"	August 13, "	
" "	2424	"	August 17, "	
" "	24294	"	August 17, "	
" "	24120	"	October 27, "	
August 5	20625	W. E. D.	August 11, "	
" "	28485	"	" 13, "	
" "	23924	E. N. S.	" " "	
" "	23785	"	" " "	
" "	25009	"	" " "	
August 8	25149	"	August 11, "	Quaile's M.
August "	5022	D. L.	August 18, "	" mill.
" "	37612	N. Y., L. & W.	" 15, "	
" "	20942	E. M. L.	" 17, "	
" "	11186	C., S. L.	Sept. 12, "	
" "	9054	"	" 14, "	
" "	9027	"	August 15, "	
" "	27171	E.	" 17, "	
" "	25267	E. N. S.	" 23, "	
" "	23209	"	" 17, "	
" "	11276	C., S. L.	" 26, "	Quail mill.
" "	23384	E. N. L.	" 24, "	
157				
August 14	35028	E. N. L.	August 24, 1883	
" "	24235	"	" 31, "	Coal. Q. mill.
" "	11132	C., S. L.	Sept. 7, "	
" "	11531	"	August 24, "	
" "	24112	E.	" 24, "	
" "	28342	W. E. D.	" 24, "	
August 16	23264	E. N. S.	Sept. 7, "	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
August 16	11655	C., S. L.	Sept. 7, 1883	
" "	23002	E. & N. S.	October 29, "	
" "	35024	E. & N. S.	Sept. 5, "	
" "	28559	W. E. D.	Sept. 14, "	
" 17	23565	E. N. S.	Oct. 1, "	
" "	23436	"	August 26, "	
" "	5084	D. T. L.	Sept. 5, "	
" "	15576	D. T. L.	Oct. 26, "	
" "	25474	E. N. S.	Sept. 27, "	
" "	35022	E. N. S.	Sept. 5, "	
August 21	14649	C., S. L.	August 29, "	
" 22	25444	E. N. S.	Sept. 1, "	
" "	25028	E. N. S.		
August 24	14538	C., S. L.	Sept. 7, "	
" 25	36792	N. Y., L. E. & W.	" " "	
" "	5086	D. L.	" 1, "	
" "	23308	E. N. S.	" 5, "	Quail mill.
" "	5019	D. L.	" 1, "	
" "	24030	E. N. S.	" 5, "	
" 28	34026	E. N. S.	" 1, "	
" "	24224	E. N. S.	August 31, "	
" "	1508	C., S. L.	" " "	
" 30	28283	W. E. D.	Sept. 7, "	
" "	24279	E. N. S.	" 5, "	
158				
August 30	5147	D. L.	Sept. 5, 1883	
Sept. 1	11501	C., S. L.	" " "	
" "	11519	C., S. L.	October 10, "	
" "	2089	C., S. L.	Sept. 12, "	
" "	15581	D. L.	" " "	
" "	12335	H. T. L.	" 24, "	
" 3	25185	E. N. S.	" 12, "	
" "	34029	"	" 22, "	
" "	24208	"	" 18, "	
" 5	11105	C., S. L.	" 17, "	
" "	23663	E. N. S.	October 11, "	
" 8	23071	"	Sept. 7, "	Quail mill.
" "	28343	W. E. D.	" 27, "	
" 10	15161	C., S. L.	" 17, "	
" "	25237	E. N. S.	" 25, "	
" "	7578	P. C. St.	October 11, "	Loaded.
" "	24182	E. N. S.	Sept. 17, "	
" 12	5208	C., S. L.	October 5, "	
" "	17140	"	" 19, "	
" 14	5028	D. L.	" 17, "	
" "	5029	"	Sept. 22, "	
" "	24225	E. N. S.	" " "	
" "	11596	C., S. L.	" " "	
" 16	2628	B. L.	" 25, "	
" "	1108	M. D. T.	October 1, "	
" 13	11226	C., S. L.	Sept. 20, "	Generally mill.
" "	9044	"	" 12, "	Wheat. Quail M.
" 19	34047	E. N. S.	" " "	Loaded. "

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
Sept. 19	4402	L. V.	Sept. 27, 1883	
" "	2345	E. M. L.	October 1, "	
" "	9089	C., S. L.	" 25, "	Quail mill.
159				
Sept. 19	11581	C., S. L.	Sept. 27, 1883	
" "	2028	"	" 28, "	Quail mill.
" "	23432	E. N. S.	" 24, "	
" "	23598	"	October 1, "	
" "	11158	C., S. L.	Sept. 27, "	
" "	5043	D. L.	" 24, "	
" "	23336	E. N. S.	October 1, "	
" "	22982	"	Sept. 24, "	
" 22	11210	C., S. L.	" 28, "	
" "	17006	"	October 22, "	
" "	28150	W. E. D.	" 1, "	
" 24	24143	E. N. S.	" 19, "	
" "	37083	N. Y. & L. W.	" " "	
" "	34174	E. N. S.	" 1, "	
Sept. 24	17148	C., S. L.	" 22, "	
" "	11658	"	" 6, "	
" "	2365	M. D. T.	" 20, "	
" "	23569	E. N. S.	Nov. 5, "	
" "	25144	"	Oct. 1, "	
" "	23446	"	" " "	
" 25	11488	C., S. L.	" 14, "	
" 26	11602	"	Nov. 3, "	Loaded.
" 27	14504	"	Oct. 11, "	
" "	14518	"	Nov. 5, "	
" "	11283	"	Oct. 14, "	
" "	4776	"	" 10, "	
" 28	5391	D. I. W.	" 5, "	Quail's mill.
" "	34051	E. N. S.	" 1, "	
" 29	2338	E. M. L.	Oct. 12, "	
" "	10334	D. L. W.	" 5, "	Quale's mill.
" "	2338	E. M. L.	" " "	
160				
Oct. 1	2714	P. N. Y.	Oct. 23, 1883	
" "	4129	L. V.	" 10, "	
" "	2373	E. N. S.	" " "	
" 2	34057	"	" " "	
" "	5020	D. L.	" 18, "	
" "	23375	E. V. S.	" 8, "	
" "	35014	"	" " "	
" "	2013	C., S. L.	April " "	Omitted.
" 5	11443	"	Oct. 8, "	Quale's mill.
" "	14616	"	" " "	"
" 8	4381	L. V.	" 12, "	
" "	3981	"	" 20, "	
" "	20337	E. N. S.	" " "	
" "	3423	L. V.	" " "	
" 11	2673	M. D. T.	Nov. 30, "	From Quale's.
" "	11483	C., S. L.	Oct. 30, "	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
Oct. 11	29959	N. L. V.	Oct. 14, 1883	Quale's mill.
" "	25461	E. N. S.	" " "	"
" "	23769	E. M. L.	" 17, "	
" "	2849	W. E. D.	" 23, "	Quale's mill.
" "	23971	E. V. J.	" 20, "	"
" 17	11175	C. S. S.	" 26, "	"
" "	11237	"	" 20, "	"
" "	5172	D. L.	" 23, "	
" "	5147	D. L.		
" 22	28388	W. E. D.	" 26, "	Quale's mill.
" "	34170	E. N. S.	" " "	"
" 24	14306	N. Y., L., W.	Nov. 1, "	" No bill.
" 11	25232	E. V. S.	" " "	"
" "	25432	"	Oct. 27, "	"
" "	34156	"	" 11, "	
161				
Oct. 26	23757	E. M. L.	Nov. 5, 1883	Quale's. No bill.
" "	27122	"	" 1, "	" "
" "	34056	E. V. S.	" 5, "	
" "	20791	W. E. D.	" 2, "	
" "	11669	C., S. L.	" 1, "	No bill.
" 29	25448	E. V. S.	Oct. 29, "	Quale's mill.
" "	22314	C. Express	Nov. 2, "	
" "	27107	E. M. L.	" 5, "	
" "	11134	C., S. L.	" 24, "	
" "	17119	"	" " "	
" 31	14624	"	" 20, "	No bill.
	34159	E. N. S.	Nov. 1, 1883	Quale's mill. No bill.
Oct. 30	5152	D. L.	" 3, "	
" "	14721	N. Y., C., W.	" 2, "	
" "	3645	L. V.	" 2, "	
" "	24056	E. N. S.	Dec. 6, "	From Quale.
Nov. 1	17071	C., S. L.	Nov. 16, "	
" 7	25455	E. N. S.	" 24, "	
" 14	28142	W. & E. D.	" 24, "	
" "	23555	E. N. S.	" 23, "	
" "	23997	E. & M. L.	" 19, "	
" "	25396	E. N. S.	" " "	
" "	5035	D. L.	" 19, "	
" "	25345	E. N. S.	" " "	
" "	28561	W. & E. D.	" " "	
" "	15561	D. L.	" 23, "	
" "	20630	W. & E. D.	" 21, "	
" "	23721	E. & M. L.	" 20, "	
" 16	24297	E. N. S.	" 24, "	Quale's mill.
" "	23417	"	" 20, "	"
162				
Nov. 16	5029	D. L.	Nov. 20, 1883	Quale's mill.
" "	25013	E. N. S.	" " "	"
" "	28523	W. & E. D.	" " "	"
" 16	34185	E. N. S.	" 24, "	"

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
Nov. 16	25218	E. N. S.	Nov. 20, 1883	Quale's mill.
" 17	25381	"	" 24, "	"
" "	23127	"	" 24, "	"
" 21	28174	W. E. D.	" " "	"
" "	28484	"	Dec. 4, "	"
" "	2601	B. L.	Nov. 24, "	"
" "	3110	"	" 30, "	"
" 23	28250	W. & E. D.	" 30, "	"
" "	20910	E. & M. L.	Dec. 4, "	
" 28	30528	N. Y., L. E., W.	" 8, "	"
" "	27010	"	" 4, "	"
" "	25334	E. W. S.	" 3, "	
Dec. 1	23057	"	" 4, "	"
" "	24205	"	" 4, "	"
" "	23058	"	" " "	"
" "	23879	E. M. L.	" 5, "	"
" "	695	B. H., F. W.	" " "	"
" 4	25232	E. W. S.	" 18, "	"
" "	34110	E. N. S.	" 8, "	"
" 5	20638	W. E. D.	" " "	"
" "	23736	E. M. L.	" " "	
" "	25555	E. M. Ex.	" 18, "	"
" "	23692	E. N. S.	" 12, "	
" "	23293	"	" " "	
" "	34123	"	" " "	
" 6	24084	E. N. S.	Jan. 9, "	To Toledo.
" 12	23477	"	Dec. 17, "	Quale's.
163				
Dec. 12	10567	B. L.	Dec. 14, 1883	Quale's.
" "	1247	"	" 15, "	"
" "	28444	W. E. D.	" 15, "	"
" "	25228	E. N. S.	" 14, "	"
" 15	9103	C., S. L.	" 24, "	"
" "	11251	"	" " "	"
" 17	2447	B. L.	" 19, "	"
" "	395	"	" " "	"
" "	3562	"	" " "	"
" "	2525	C. S. R.	" 20, "	"
" 18	30318	N. Y., L. E., W.	" 22, "	"
" "	24078	E. N. S.	" " "	"
" 19	2649	M. D.	June 22, "	"
" "	25457	E. N. S.	Jan. 7, "	"
" "	23832	E. M. L.	" 9, "	"
" "	29914	M. L. & E. W.	Feb. 2, "	"
" "	6128	Erie	June 22, "	"
" 20	230	B. L.	Dec. " "	"
" "	37397	N. Y., L. E., W.	" 21, "	"
" "	6356	"	" " "	"
" 24	23533	E. N. S.	Jan. 2, "	"
" "	30087	N. Y., L. E., N.	" " "	"
" 26	36735	"	Dec. 28, "	"
" "	38629	"	" " "	"
" "	36875	"	" " "	"

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
Dec. 28	3080	B. L.	Jan. 2, 1883	Quale's.
" "	2694	"	" " "	"
" "	27962	N. Y., L. E., W.	" 9, "	"
" "	30465	"	" 15, "	"
" "	30241	"	" 9, "	"
" 31	14555	C., S. L.	" 11, "	"
164				
Dec. 31	17069	C., S. L.	Jan. 9, 1883	Quale's.
Jan. 2	1263	M. D. F.	Feb. 2, "	"
" "	739	"	Jan. 28, "	"
" "	1112	B. L.	" 22, "	"
" "	29752	M. S., E. W.	" 11, "	"
" "	36884	"	" 15, "	"
" "	27951	"	" 22, "	"
" "	36783	"	" 29, "	"
" 12	29068	"	" 28, "	"
" "	425	B. L.	" 15, "	"
" "	811	"	Feb. 2, "	"
" "	2350	"	" 9, "	"
" "	3058	"	" 13, "	"
" 17	29412	M. S. E. W.	" 25, "	"
" "	28370	W. & E. D.	" " "	"
" 24	5088	D. L.	" 9, "	"
" "	24248	E. N. S.	" 2, "	"
" "	24008	"	" " "	"
Feb'y 2	27571	M. S. E. W.	" 28, "	"
" "	29778	M. S. E. W.	Feb. 15, "	"
" "	23171	E. N. S.	" " "	"
" 5	28246	W. E. D.	" 13, "	"
" "	5044	D. L.	" " "	"
" "	23426	E. N. S.	" " "	"
" 6	11648	C., S. L.	" 16, "	"
" "	4412	M. S. E. W.	Mar. 15, "	"
" "	15223	"	" 17, "	"
" "	29415	"	" 21, "	"
" 13	14569	C., S. L.	Feb. 16, "	"
" "	27112	S. M. L.	Mar. 8, "	"
" "	36603	M. S. E. W.	Feb. 23, "	"
165				
Feb. 13	38528	M. S. E. W.	Mar. 3, {1884 / 1885}	Quale's.
" "	29705	"	Feb. 23, "	"
" "	27815	N. Y., L. E., W.	Feb. 16, "	"
" 28	25105	E. N. S.	M'ch 12, "	Quail.
" "	27813	N. Y., L. E., W.	" 20, "	"
" "	25777	E. N. S.	Ap'l 12, "	"
" "	25301	E. N. S.	M'ch 8, "	"
March 8	25766	"	" 17, "	"
" "	23309	"	" " "	"
" "	28096	"	" " "	"
" 13	11560	C., S. L.	" 19, "	"
" 13	11139	C., S. L.	" 21, "	"

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer.—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
March 17	753	N. O. L.	M'ch 22, "	Quail.
" "	1327	"	" 21, "	"
" 19	6031	E. R.	" 25, "	"
" "	28541	E. A. D.	" 25, "	"
" "	2730	M. S. E. W.	" " "	"
" "	6085	E. R.	" 22, "	"
" "	28573	W. E. D.	" " "	"
" "	37960	M. S. E. W.	" 25, "	"
" "	3096	"	" " "	"
" "	28306	W. E. D.	" " "	"
" 20	4129	C., S. L.	" 24, "	"
" 24	25876	E. M. L.	Ap'l 18, "	"
" "	25899	E. P. D.	Ap'l 5, "	"
" "	2026	B. L.	" 3, "	"
" "	1210	M. O. T.	" " "	"
" "	1712	"	" 27, "	"
" "	2079	"	" " "	To Toledo.
" 29	9020	C., S. L.	" 2, "	"
Ap'l 3	28380	W. & E. D.	" 7, "	
166				
1884.				
Ap'l 3	24009	E. N. S.	Ap'l 7,	
" 5	7026	B. L.	" 12,	Quail.
" "	332	"	" 10,	"
" "	819	B. L.	" 12,	
" "	4149	H. T. L.	" 10,	
" "	38371	N. Y., L. E., W.	" "	
" 9	11133	C., S. L.	" "	"
" "	14555	C., S. L.	" 12,	"
" 10	23556	E. N. S.	" 16,	
" 11	24099	"	" 15,	
" "	609	B. L.	" 24,	"
" "	3084	"	" 19,	
" "	3103	"	" 18,	"
" "	2723	"	" 16,	"
" "	419	"	" "	"
" 12	25750	Com. Ex.	" 16,	"
" "	29943	N. Y., L. E., W.	" 18,	
" 16	28354	W. & E. D.	" 21,	
" 17	11169	C., S. L.	May 20,	
" "	11227	"	" "	
" "	9047	"	Ap'l 30,	
" "	11447	C., S. L.	" 22,	
" "	1771	M. D. S.	" 16,	
" "	431	M. D. L.	" 24,	
" 18	11643	C., S. L.	" 30,	
" "	11249	"	May 5,	
" "	9003	"	Ap'l 30,	
" "	11625	"	" 25,	
" "	9112	"	" "	
" "	11184	"	June 12,	
" 19	2040	B. L.	Ap'l 30,	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
167				
1884.				
Ap'l 19	1140	B. L.	Ap'l 30,	
" 23	1712	M. O. T.	July 16,	
" 25	2008	C., S. L.	May 4,	Quail.
" "	11233	"	" "	"
" "	4776	"	" 1,	"
May 1	23625	E. N. S.	" "	"
" "	3103	B. L.	" 16,	"
" "	635	"	" 5,	"
" 1	364	"	" "	"
" "	4514	D. L.	" "	"
" "	26859	E. & P. D.	" "	"
" 5	1348	B. L.	" 13,	"
" 7	1123	"	" 21,	"
" "	3086	"	" 16,	"
" "	2367	"	" "	"
" "	1136	"	" 18,	"
" 10	25152	E. N. S.	" 31,	"
" "	24138	"	" 19,	"
" 15	2026	C., L. S.	" "	"
" "	11306	"	June 25,	
" "	2202	M. D. T.	May 19,	
" 20	438	B. L.	June 2,	"
" "	2272	"	May 31,	"
" "	30309	M. S. & E. W.	June 2,	"
" "	23945	E. & M. L.	" 4,	"
" "	4217	H. T. L.	" "	"
" "	4325	"	" 2,	
" 29	36781	N. Y., L. E., W.	" 12,	"
" 29	37144	"	" 14,	"
" 29	35559	"	" 7,	"
" 29	37890	"	" "	"
168				
1884.				
May 29	28589	W. E. D.	June 9,	Quail.
June 12	30565	N. Y., L. E., W.	" 18,	"
" "	30165	"	" "	"
" "	36827	"	" 19,	"
" "	30293	"	" "	"
" "	30304	"	" 18,	"
" 14	796	Mot.	" 24,	
" "	773	"	" 30,	
" 18	30413	N. Y., L. E., W.	" 24,	"
" "	36742	"	" 23,	"
" "	27763	"	July 12,	"
" "	3017	"	" 11,	"
" "	3742	"	" 24,	"
" 21	9044	C., S. L.	" 25,	
" "	2887	M. D. T.	" 25,	"
July 1	14596	C., S. L.	" 11,	
" 7	37016	N. Y., L. E., W.	" 26,	"
" "	29901	"	" 23,	"

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1884.				
July 7	29539	N. Y., L. E., W.	July 21,	Quail.
" "	29684	"	Aug. 2,	"
" 12	1002	M. O. T.	Sept. 10,	
" 26	25128	E. N. S.	Aug. 2,	
Aug. 1	9018	C., S. L.	" 16,	
" 5	11490	C., S. L.	" 8,	
" 6	9038	C., S. L.	Sept. 14,	"
" 7	24067	E. N. S.	" 22,	"
" 7	24696	S. S. L.	" 20,	"
" 7	14857	N. Y., L. W.	" "	"
" 12	1768	M. D. T.	" 16,	"
" 19	37974	N. Y., L. E., W.	" 29,	"
" "	29321	"	" "	"
169				
1884.				
Aug. 19	29834	N. Y., L. E., W.	Aug. 29,	Quail.
" "	21154	"	Sept. 7,	"
" "	27571	"	" 2,	"
" 21	30364	"	Aug. 26,	
" "	4556	"	" 26,	
" "	25341	E. N. S.	" 29,	
" "	24193	"	" 25,	
" "	23450	"	" "	
" "	21129	N. Y., L. E., W.	" 29,	
" "	36697	"	" 30,	
" "	27907	"	" "	
" "	37039	"	" "	
" "	36883	"	" 29,	
" "	22797	"	" "	
" 28	15563	D. L.	Sept. 2,	
" "	29666	N. Y., L. E., W.	" "	
" "	15368	"	" 4,	
" "	27898	"	Aug. 30,	
" "	27822	"	" "	
" 30	15577	D. L.	Sept. 4,	
" "	35543	L. S. L.	" "	
" "	4711	N. Y., L. E., W.	" 7,	
" "	26092	E. & P. D.	" 2,	
" "	38670	N. Y., L. E., W.	" 4,	
Sept. 1	27594	"	Sept. 10,	
" "	29898	"	" "	
" "	21268	"	" 13,	
" "	24148	E. N. S.	" 15,	
" "	34129	"	" 22,	
" "	6011	E. R. Y.	" 10,	
" 8	38056	N. Y., L. E., W.	" 11,	
170				
1884.				
Sept. 10	37996	N. Y., L. E., W.	Sept. 22,	
" "	38287	"	" 15,	
" "	25382	E. & W. S.	" "	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1884.				
Sept. 11	26764	S. I. E.	Sept. 22,	
" "	25128	E. & W. S.	" 18,	
" "	29816	N. Y., L. E., W.	" "	
" "	38623	"	" "	
" 13	36848	"	" 22,	
" 14	4461	L. V.	Oct. 7,	
" "	37301	N. Y., L. E., W.	" 7,	
" 20	4075	L. V.	Sept. 26,	
" "	23658	E. N. S.	" "	
" 22	23727	E. & M. L.	" 27,	
" "	3231	L. V.	" "	
" "	22453	Com. Ex.	" 26,	
" "	37065	N. Y., L. E., W.	" "	
" "	38143	"	Oct. 1,	
" "	37421	"	Sept. 27,	
Oct. 1	37372	"	Oct. 4,	
" "	28237	N. & E. D.	" "	
" "	37053	N. Y., L. E., W.	" "	
" "	6120	E. R. W.	" 6,	
" "	28350	W. & E. D.	" "	
" "	28555	"	" 8,	
" 2	6249	E. R'y	Nov. 12,	
" "	23492	E. N. S.	Oct. 9,	
" "	38203	N. Y., L. E., W.	" 7,	
" "	23392	E. N. S.	" 10,	
" 4	27561	N. Y., L. E., W.	" 28,	To Toledo.
" "	26436	E. & P. D.	" 8,	
" "	25318	E. N. S.	" 8,	
171				
1884.				
Oct. 6	22724	N. Y., L. E., W.	Oct. 16,	
" "	21273	"	" 18,	
" "	25376	E. N. S.	Nov. 17,	
" "	29398	N. Y., L. E., W.	Oct. 8,	
" "	27019	"	" "	
" 7	37560	Com. Ex.	" "	
" 13	11222	C. S. L.	" 22,	
" 23	9181	C. H. W. T.	Nov. 11,	H. H. goods, stock.
" 31	11312	C. S. L.	Dec. 9,	
" "	11159	"	Nov. 11,	
Nov. 11	37074	N. Y., L. E., W.	" 17,	
" "	29957	"	" "	
" "	30461	"	" "	
" "	25727	Com. Ex.	" 22,	
" "	27781	N. Y., L. E., W.	" 14,	
" 18	24982	S. S. L.	Nov. 22,	
" "	27010	N. Y., L. E., W.	" "	
" "	27502	"	" 21,	
" 20	36516	N. Y., L. E., W.	" 30,	
" "	4825	"	" "	
" 21	11115	C. S. L.	Dec. 1,	
" "	11194	"	Nov. 27,	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1884.				
Nov. 22	34043	E. N. S.	Dec. 2,	
" "	25327	"	" 3,	
" "	37909	N. Y., L. E., W.	Nov. 30,	
" "	38283	"	"	
" "	37668	Com. Ex.	" 29,	
" 24	29811	N. Y., L. E., W.	" 19,	Coal.
" 26	29768	"	" 2,	From Quail.
" 27	23121	E. N. S.	Dec. 12,	
" "	37266	N. Y., L. E., W.	" 10,	
172				
1884.				
Dec. 27	28425	W. & E. D.	Dec. 5,	
" "	23309	E. N. S.	Dec. 9,	From Quail.
" "	25372	"	" 5,	"
" "	34185	"	" 6,	
" "	14523	C., S. L.	" 4,	"
" 1	23576	E. N. S.	" 4,	
" 3	24198	"	"	
" "	1277	W. D. T.	" 9,	
" 6	28129	W. E. D.	" 12,	
" "	20650	"	"	
" "	36476	Com. Ex.	"	
" 10	25036	E. N. S.	" 13,	
" "	23200	"	" 29,	
" "	34149	"	" 19,	
" 13	20713	W. E. D.	"	
" 19	37014	N. Y., L. E., W.	" 28,	
" 20	34188	E. N. S.	" 26,	
" "	9032	C., S. L.	"	
" "	9007	"	"	
" "	11500	"	" 30,	
" "	27017	N. Y., L. E., W.	"	
" 26	25009	E. N. S.	Jan. 4, 1885	Corn, sealed, 74.
" 28	25002	"	" 10, "	
" "	24036	E. N. S.	" 7, "	
" "	14717	Erie	" 2, "	Quail.
" 29	34163	E. N. S.	" 6, "	
" "	11584	C., S. L.	" 2,	Quail.
" "	11304	"	Dec. 31,	"
" "	29658	N. Y., L. E., W.	Jan. 4,	
" "	30176	"	" 8,	
" "	24088	E. N. S.	"	
173				
1884.				
Dec. 29	3363	L. V.	Jan. 3, 1885	
" "	30532	N. Y., L. E., W.	"	
1885.				
Jan. 2	2107	B. L.	" 8,	
" "	388	"	"	
" "	329	M. D. T.	"	
" 4	25911	E. P. S.	"	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1885.				
Jan. 4	4587	N. Y., L. E., W.	Jan. 3, 1885	
" "	11673	C., S. L.	" 7,	
" "	26949	E. P. D.	" 10,	Coal, Zacharias & Co.
" 9	14555	C., S. L.	" 15,	
" "	14612	"	" 19,	
" "	36456	N. Y., L. E., W.	" "	
" "	29644	"	" "	
" 10	11204	C., S. L.	" "	Quail.
" "	14992	N. Y., L. E., W.	" 15,	"
" "	3225	L. V.	" "	"
" "	24676	S. S. L.	" "	"
" "	11566	C., S. L.	" "	"
" "	11557	"	" "	"
" "	14637	"	" 22,	
" "	2005	"	" "	
" "	14632	"	" 23,	
" 17	2795	P. & N. Y. E. R. C.	" 24,	Quail.
" "	34078	E. N. S.	" 21,	"
" 19	14554	C., S. L.	" 23,	
" 22	23824	Com. Ex.	" 27,	Quail.
" "	23824	E. M. L.	" 24,	"
" 23	34163	E. N. S.	Feb. 2,	"
" 27	8300	N. C.	" 7,	
" "	14650	C., S. L.	" "	
" 29	11649	"	" "	
174				
1885.				
Jan. 31	37661	Com. Ex.	Feb. 13,	Quail.
" "	22982	E. N. S.	Feb. 13,	"
" "	35661	S. S. L.	" 7,	"
Feb. 6	37126	N. Y., L. E., W.	" 13,	
" "	27502	"	" "	
" "	29055	"	" "	
" "	36688	"	" 14,	
" "	23713	E. & M. L.	" 13,	Quail.
" "	3125	L. V.	Mar. 11,	"
" "	28341	W. & E. D.	Feb. 14,	
Feb. 7	22975	E. N. S.		
" "	23750	E. & M. L.	" "	
" "	37421	N. Y., L. E., W.	" "	
" "	24347	E. N. S.	" 9,	
" "	28441	W. E. D.	" 5,	
" "	30380	N. Y., L. E., W.	Mar. 5,	
" "	36900	"	" "	
" 19	11544	C., S. L.	" 7,	Quail.
" "	11659	"	Feb. 20,	"
" "	14514	"	" 27,	
" 26	2 (illegible)			
" "	25074	E. M. S.	Mar. 26,	Quail.
" "	25211	"	Ap'l 3,	"
" "	25798	Com. Ex.	Mar. 23,	"

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1885.				
Feb. 26	37172	N. Y., L. E., W.	Mar. 40, (?)	Quail.
Mar. 5	6293	B. L.	" 9,	
" 11	29663	N. Y., L. E., W.	" 16,	
" "	37647	Com. Ex.	" 14,	
" "	3309	L. V.	" "	
" 18	24165	E. N. S.	" 21,	
" "	4971	L. V.	" "	
175				
1885.				
Mar. 18	28578	W. & E. D.	Mar. 27,	
" "	28570	"	Ap'l 2,	
" 20	11203	C., S. L.	Mar. 27,	
" "	14586	"	" 25,	
" "	14700	"	" "	
" "	11306	"	" "	
" 24	37557	Com. Ex.	" 30,	
" "	28517	W. & E. D.	" "	
" "	22999	E. N. S.	" 27,	
" "	37942	N. Y., L. E., W.	Ap'l 1,	
" 25	22954	E. N. S.	Mar. 30,	
" "	38357	N. Y., L. E., W.	Ap'l 6,	
" "	227117	"	" 1,	
" 27	27122	E. & M. L.	" 7,	
" "	22294	Com. Ex.	Mar. 30,	
Ap'l 2	37699	"	May 1,	Quail.
" "	34193	E. N. S.	Ap'l 21,	"
" "	36966	N. Y., L. E., W.	" 16,	"
" "	28537	W. E. D.	" 7,	"
" 7	37647	Com. Ex.	" 11,	
" "	6565	E. P. D.	" 10,	
" "	24227	E. N. S.	" 11,	
" "	23611	"	" 13,	
" "	24838	S. S. L.	" 14,	
" "	22268	Com. Ex.	" 15,	
" "	25376	E. N. S.	" 20,	
" "	23865	L. M. L.	" 11,	
" 8	38376	N. Y., L. E., W.	" 15,	
" 9	23102	E. N. S.	" 14,	
" "	23198	"	" "	
" 13	14549	C., S. L.	" 18,	
176				
1885.				
Ap'l 13	24063	E. N. S.	Ap'l 16,	
" "	23557	"	" "	
" 17	3124	L. V.	" 22,	
" "	26475	E. P. D.	" "	
" "	28460	W. E. D.	" 29,	
" "	23700	E. M. L.	" 23,	
" 17	37164	N. Y., L. E., W.	Ap'l 24,	
" "	29376	"	" 23,	
" 18	14696	C., S. L.	" 28,	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1885.				
Ap'l 18	14720	C., S. L.	May 9,	
" 23	29768	N. Y., L. E., W.	Ap'l 28,	
" 28	23582	E. N. S.	May 6,	
" "	4439	N. Y., L. E., W.	" "	
" "	36766	"	" 8,	
" "	25217	E. N. S.	" 8,	
" "	28538	W. E. D.	" 2,	
" "	27026	N. Y., L. E., W.	" 1,	
" "	489	M. D. T.	" "	
" "	4535	L. V.	" "	
" "	24105	E. N. S.	May 1,	
" "	24241	"	" 2,	
" "	27112	E. & M. L.	" "	
" "	24227	E. N. S.	" 6,	
" 29	25160	"	" 8,	
" "	28498	W. E. D.	May 2,	
" "	947	B. H. H. W.	" 2,	
May 2	28405	W. E. D.	" 7,	
" "	25325	E. N. S.	" "	
" "	22150	Com. Ex.	" 7,	
" "	22700	N. Y., L. E., W.	" 8,	
" "	24280	E. N. S.	" 7,	
177				
1885.				
May 2	28449	W. & E. D.	May 9,	
" 5	37697	Com. Ex.	" 8,	
" "	28134	W. & E. D.	" 9,	
" "	6180	E. R'y	" "	Quail.
" "	24184	E. N. S.	" 12,	"
" "	28426	W. E. D.	June 25,	"
" "	34057	E. N. S.	" 10,	"
" "	25376	"	" 12,	
" "	21112	N. Y., L. E., W.	" 9,	
" "	37591	Com. Ex.	" 15,	
" 7	23779	E. M. L.	" 16,	
" "	23606	E. N. S.	May 15,	
" "	20792	W. E. D.	" 13,	
" 12	24013	E. N. S.	" 15,	
" "	28249	W. E. D.	" "	
" "	20759	"	" 18,	
" "	29456	N. Y., L. E., W.	" 21,	
" "	25283	E. N. S.	" 13,	
" "	23644	"	" 20,	
" 14	23460	"	" 26,	
" "	37528	Com. Ex.	" 22,	
" 16	34275	E. N. S.	" 26,	Potatoes, Delphos, sealed.
" "	28011	S. S. L.	" 20,	
" "	30082	N. Y., L. E., W.	" "	
" "	28274	W. E. D.	" "	
" "	28233	"	" 21,	
" "	22822	E. & M. L.	" 22,	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1885.				
May 18	27815	N. Y., L. E., W.	May 23,	
" "	34107	E. N. S.	" 22,	
" "	22163	Com. Ex.	June 3,	
" 19	6282	B. L.	May 25,	Quail.
178				
1885.				
May 19	6307	B. L.	May 23,	Quail.
" "	356	"	" 22,	"
" "	403	"	" 21,	"
" "	23068	E. N. S.	" 23,	
" 21	25970	E. & P. D.	" 26,	
" "	24241	E. N. S.	" "	
" "	23474	"	" 29,	
" "	29341	N. Y., L. E., W.	" 28,	
" 25	3098	S. S. L.	June 1,	
" "	25392	E. N. S.	" "	
" "	4535	B. L.	May 29,	
" 26	25511	Com. Ex.	" 30,	
" "	28256	W. E. D.	" 30,	
" 27	24174	E. N. S.	June 2,	
" "	28231	N. Y., L. E., W.	" 1,	
" "	23277	E. N. S.	May 30,	
" 28	22366	Com. Ex.	June 8,	
" "	2039	C., S. L.	" 12,	
" "	22120	Com. Ex.	" 6,	
" "	25564	"	" "	
June 1	23121	E. N. S.	" 9,	
" "	27582	Com. Ex.	" "	
" "	23988	E. M. L.	" 6,	
" "	28255	W. E. D.	" "	
" 2	23580	E. N. S.	" "	
" "	23167	"	" 9,	
" 3	5189	L. V.	" 8,	
" "	37667	Com. Ex.	" 12,	
" "	22365	"	" 9,	
" "	37339	N. Y., L. E., W.	" "	
" "	2009	C., S. L.	" "	
179				
1885.				
June 3	2656	B. L.	June 6,	
" "	896	"	" 5,	
" 4	25498	E. N. S.	" 8,	
" "	24280	"	" 10,	
" "	23968	E. M. L.	" 8,	
" "	24300	E. N. S.	" 9,	
" "	22813	"	" 26,	
" 5	372	B. L.	" 9,	
" 8	2473	"	" 19,	
" "	1159	"	" "	
" "	820	"	" 10,	
" "	29458	N. Y., L. E., W.	" 11,	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1885.				
June 8	2187	B. L.	June 12,	
" "	626	"	" 13,	
" "	28301	E. N. S.	" 12,	
" "	28256	"	" 15,	
" "	22989	"	" 20,	
" "	24340	"	" 13,	
" "	25064	"	" "	
" 10	1234	G. W. D.	" 18,	
" "	23169	E. N. S.	" 12,	
" "	22962	"	" 16,	
" "	23349	"	" 13,	
" "	23279	"	" "	
" "	23329	"	" 15,	
" "	23347	"	" 26,	
" "	23330	"	July 6,	
" 12	21269	N. Y., L. E., W.	June 16,	
" "	30339	"	" "	
" "	25215	E. N. S.	" 20,	
" "	4549	N. Y., L. E., W.	" 25,	
180				
1885.				
June 12	29813	N. Y., L. E., W.	June 30,	
" "	27850	"	July 2,	
" 13	4500	B. L.	June 18,	
" 15	14638	C., S. L.	" 25,	
" 19	28148	W. & E. D.	" 26,	
" "	28577	"	" "	
" "	28190	"	" "	
" "	23636	E. N. S.	" 25,	
" "	23253	"	" "	
" 20	36537	N. Y., L. E., W.	" 26,	
" "	28596	W. E. D.	" "	
" "	25300	E. N. S.	" "	
" "	24200	"	" 25,	
" "	4566	N. Y., L. E., W.	" 30,	
" "	4623	"	" 29,	
" 26	2013	C., S. L.	July 1,	
" "	14507	"	" "	
" "	34057	E. N. S.	Aug. 31,	
" "	434	B. L.	July 6,	
" "	631	"	June 30,	
" "	6214	"	" "	
" 28	25534	Com. Ex.	July 1,	
" "	28442	W. E. D.	" "	
" "	28316	"	" "	
" "	24315	E. N. S.	" "	
" 28	15156	N. Y., L. E., W.	" 2,	
" "	29202	"	" 1,	
" 29	24082	E. N. S.	" 2,	
" "	28217	W. E. D.	" "	
" "	25777	Com. Ex.	" "	
" "	25290	E. N. S.	" 2,	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
181				
1885.				
June 30	9106	C., S. L.	July 6,	
" "	11168	"	" "	
" "	14536	"	" "	
" "	14753	"	" "	
" "	2343	B. L.	" 10,	
" "	1028	"	" 15,	
July 1	11566	C., S. L.	" 9,	
" "	2074	"	" "	
" 3	23300	E. N. S.	" "	
" "	28186	"	" 8,	
" "	23083	"	" "	
" "	23196	E. N. S.	" "	
" 5	37814	N. Y., L. E., W.	July 8,	
" 7	26852	E. P. D.	" "	
" "	22219	Com. Ex.	" 13,	
" "	25409	E. N. S.	" "	
" "	24214	"	" "	
" "	37170	N. Y., L. E., W.	" "	
" "	27875	"	" 15,	
" "	24329	E. N. S.	" 11,	
" "	29496	N. Y., L. E., W.	" "	
" "	14455	"	" "	
" 8	24307	E. N. S.	" "	
" "	24008	"	" "	
" "	23479	"	" "	
" "	25792	Com. Ex.	" 14,	
" "	20783	W. E. D.	" 15,	
" "	34131	E. N. S.	" 11,	
" "	23475	"	" "	
" "	25309	"	" 1,	
" "	28418	W. E. D.	" 11,	
182				
1885.				
July 9	36862	N. Y., L. E., W.	July 14,	
" "	28406	W. E. D.	" "	
" "	37374	N. Y., L. E., W.	" 13,	
" "	38317	"	" "	
" "	27083	"	" 14,	
" 11	23562	E. N. S.	" 16,	
" "	25222	"	" 20,	
" "	36867	N. Y., L. E., W.	" 23,	
" "	37433	"	" 28,	
" "	25099	E. N. S.	" 16,	
" "	25660	Com. Ex.	" 16,	
" 13	29903	N. Y., L. E., W.	" "	
" "	36539	"	" "	
" "	37339	"	" 21,	
" "	25547	Com. Ex.	" "	
" "	30216	N. Y., L. E., W.	" 16,	
" "	29876	"	" 18,	
" "	14709	C., S. L.	" 17,	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1885.				
July 13	14593	C., S. L.	July 17,	
" "	14787	"	" "	
" 14	28383	W. E. D.	" 22,	
" "	38555	N. Y., L. E., W.	" "	
" "	29947	"	" "	
" "	26997	E. P. D.	" 17,	
" "	34015	E. N. S.	" 18,	
" "	28803	E. M. L.	" 28,	
" "	37356	"	" 18,	
" "	27526	"	" "	
" 15	25558	Com. Ex.	" 22,	
" "	27963	N. Y., L. E., W.	" "	
" 16	37337	"	" 20,	
183				
1885.				
July 16	23031	E. N. S.	July 28,	
" 17	24047	"	" 28,	
" "	28543	W. E. D.	" "	
" "	28306	"	" 28,	
" "	36934	N. Y., L. E., W.	" 22,	
" 20	34186	E. N. S.	Aug. 1,	
" "	30400	N. Y., L. E., W.	" 28,	
" "	23765	E. M. L.	" 1,	
" "	27068	N. Y., L. E., W.	" "	
" "	29367	"	July 28,	
" "	37679	Com. Ex.	" "	
" "	23490	E. N. S.	" "	
" 21	37623	Com. Ex.	Aug. 3,	
" "	25652	"	July 28,	
" 22	1021	M. D. T.	" 30,	
" "	34150	E. N. S.	" 24,	
" "	37524	Com. Ex.	Aug. 4,	
" "	6094	E. R'y	" "	
" "	6054	"	July 28,	
" "	36819	N. Y., L. E., W.	Aug. 3,	
" 23	27532	"	July 30,	
" "	27516	"	" "	
" "	23549	E. N. S.	" "	
" 27	24247	"	" 31,	
" "	29318	N. Y., L. E., W.	" "	
" 28	28524	W. E. D.	Aug. 4,	
" "	22257	Com. Ex.	" "	
" "	6096	E. R'y	" "	
" "	37042	N. Y., L. E., W.	" "	
" "	27138	E. M. L.	" "	
" 29	23956	"	" 1,	
184				
1885.				
July 29	23760	E. M. L.	Aug. 10,	
" "	37052	N. Y., L. E., W.	" "	
" "	37458	"	" 6,	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1885.				
July 30	27010	N. Y., L. E., W.	Aug. 6,	
" "	25073	E. N. S.	" 4,	
" "	37990	N. Y., L. E., W.	" 6,	
" "	37892	"	" "	
" "	29472	"	" "	
" "	29796	"	" "	
Aug. 1	27860	"	" 7,	
" "	30144	"	" 10,	
" "	29766	"	" "	
" 4	30409	"	" 11,	
" "	30230	"	" 10,	
" "	25088	E. N. S.	" "	
" "	23977	E. M. L.	" "	
" "	36711	N. Y., L. E., W.	" 12,	
" "	25377	E. N. S.	" "	
" 5	36648	N. Y., L. E., W.	" 10,	
" "	4632	"	" "	
" "	29557	"	" 13,	
" "	29804	"	" "	
" 6	30074	"	" 17,	
" "	35101	E. N. S.	" 12,	
" "	27995	N. Y., L. E., W.	" "	
" "	25169	E. N. S.	" 10,	
" 7	25630	Com. Ex.	" 13,	
" "	30560	N. Y., L. E., W.	" "	
" 10	23507	E. N. S.	" 14,	
" "	27043	N. Y., L. E., W.	" "	
" "	23638	E. N. S.	" "	
185				
1885.				
Aug. 10	4879	N. Y., L. E., W.	Aug. 14,	
" "	29402	"	" 15,	
" "	25321	E. N. S.	" 14,	
" "	24136	"	" "	
" "	27158	E. M. L.	" 18,	
" "	22484	Com. Ex.	" "	
" 11	23170	E. N. S.	" 17,	
" "	15577	D. L.	" "	
" "	30457	N. Y., L. E., W.	" 15,	
" 12	25442	E. N. S.	" 19,	
" "	23802	E. M. L.	" 18,	
" "	23469	E. N. S.	" "	
" 13	28257	W. E. D.	" 19,	
" "	23859	E. M. L.	" 17,	
" "	27827	N. Y., L. E., W.	" "	
" "	23605	E. N. S.	" 18,	
" "	29420	N. Y., L. E., W.	" 19,	
" 14	23969	E. M. L.	" "	
" "	25153	E. N. S.	" "	
" "	23260	"	" 28,	
" "	28584	W. E. D.	" 19,	
" "	14621	N. Y., L. E., W.	" 20,	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1885.				
Aug. 14	29943	N. Y., L. E., W.	Aug. 20,	
" "	6143	E. R'y	" 21,	
" 17	36696	N. Y., L. E., W.	" "	
" "	36546	"	" "	
" "	15237	"	" 22,	
" 18	38262	"	" 24,	
" "	36472	"	" "	
" "	37698	Com. Ex.	" "	
" "	37148	N. Y., L. E., W.	" "	
186				
1885.				
Aug. 18	23442	E. N. S.	Aug. 24,	
" 19	23480	"	" "	
" "	29728	N. Y., L. E., W.	" "	
" "	25356	E. N. S.	" 25,	
" "	25428	"	" 27,	
" "	21375	N. Y., L. E., W.	Sept. 1,	
" "	23209	E. N. S.	Aug. 24,	
" "	24110	"	" "	
" "	23401	"	" "	
" "	27993	N. Y., L. E., W.	" "	
" "	26864	E. P. D.	" "	
" 20	23959	E. M. L.	" 28,	
" "	23372	E. N. S.	" "	
" 21	25136	"	Sept. 12,	
" "	23462	"	" 1,	
" "	433	M. D. T.	" 9,	
" "	1332	"	" 8,	
" "	28570	W. E. D.	" 26,	
" 24	23034	E. N. S.	" 27,	
" "	25628	Com. Ex.	Aug. 29,	
" "	28390	W. E. D.	" "	
" "	28702	Trs. D.	" "	
" "	25728	Com. Ex.	" 27,	
" 25	23496	E. N. S.	" 28,	
" "	23981	E. M. L.	" "	
" "	23614	E. N. S.	" "	
" "	27990	N. Y., L. E., W.	" 29,	
" "	25214	E. N. S.	" "	
" "	23513	"	Sept. 1,	
" 26	27115	E. M. L.	" 3,	
" "	24785	S. S. L.	" 2,	
187				
1885.				
Aug. 26	22359	Com. Ex.	Sept. 3,	
" "	6276	E. R'y	" "	
" 27	23966	E. M. L.	" "	
" "	30265	N. E., L. E., W.	" 1,	
" 28	23792	E. M. L.	" 4,	
" "	24163	E. N. S.	" 4,	
" "	28221	W. E. D.	" "	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1885.				
Aug. 28	37578	Com. Ex.	Aug. 3,	
" "	37369	N. Y., L. E., W.	" 2,	
" 29	6095	E. R'y	" 7,	
" "	22112	Com. Ex.	" 3,	
" "	28534	W. E. D.	" "	
" "	28084	E. N. S.	" 4,	
" "	14651	N. Y., L. E., W.	" "	
Sept. 1	6011	E. R'y	" 15,	
" "	36453	N. Y., L. E., W.	" 14,	
" "	29358	"	" 9,	
" "	27030	"	" 7,	
" "	37487	"	" 4,	
" "	376	L. V.	" "	
" 3	23479	E. N. S.	" 7,	
" "	38576	N. Y., L. E., W.	" 9,	
" "	28213	W. E. D.	" 7,	
" 4	24181	E. N. S.	" 11,	
" "	25350	"	" 10,	
" "	22975	"	" 9,	
" 5	25410	"	" 18,	
" "	23337	"	" "	
" 4	29566	N. Y., L. E., W.	Sept. 18,	
" "	25238	E. N. S.	" 12,	
" "	24344	E. N. S.	" 9,	
188				
1885.				
Sept. 7	29658	N. Y., L. E., W.	Sept. 23,	
" "	36469	"	" "	
" "	25445	E. N. S.	" 14,	
" "	25281	"	" 18,	
" "	28516	W., E. D.	" 17,	
" "	6307	B. L.	" 12,	
" "	310	"	" 17,	
" 8	23412	E. N. S.	" 22,	
" "	25141	"	" 19,	
" "	25084	"	" 14,	
" "	22345	Com. Ex.	" "	
" 12	23530	E. N. S.	" 17,	
" 17	37694	Com. Ex.	" 25,	
" "	29663	N. Y., L. E., W.	" "	
" "	11224	C., S. L.	" 23,	
" 18	6236	B. L.	" "	
" 21	35040	E. N. S.	" 25,	
" "	22326	Com. Ex.	" 26,	
" "	25055	E. N. S.	" 24,	
" "	22057	Com. Ex.	" "	
" "	30514	N. Y., L. E., W.	" 28,	
" "	23053	E. N. S.	Oct. 2,	
" "	28368	W. E. D.	Sept. 30,	
" "	25024	E. N. S.	Oct. 1,	
" 25	11539	C., S. L.	Sept. 30,	
" "	9105	"	" "	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1885.				
Sept. 25	1300	M. D. T.	Sept. 30,	
" 28	36878	N. Y., L. E., W.	Oct. 1,	
" "	23582	E. N. S.	" "	
" "	25440	E. N. S.	" "	
" "	24332	"	" "	
189				
1885.				
Sept. 28	25594	Com. Ex.	Oct. 1,	
" "	36510	N. Y., L. E., W.	" 2,	
" 30	25292	E. N. S.	" 10,	
" "	2601	L. V.	" 7,	
" "	22994	E. N. S.	" "	
" "	20690	W. E. D.	" 8,	
" "	1076	P. & R.	" 6,	
" "	709	M. D. T.	" 2,	
" "	1278	"	" 9,	
" "	876	B. L.	" 7,	
Oct. 3	27863	N. Y., L. E., W.	" "	
" "	25229	E. N. S.	" "	
" "	7531	N. C.	" "	
" 5	27999	N. Y., L. E., W.	" 10,	
" "	1263	M. D. T.	" 21,	
" "	3211	L. V.	" 10,	
" "	11528	C., S. L.	" 8,	
" "	14551	"	" "	
" 6	38169	E. Disp.	" 13,	
" 7	3839	L. V.	" 12,	
" 8	25362	E. N. S.	" 14,	
" 9	30240	N. Y., L. E., W.	" 15,	
" 12	664	B. H. T. W.	" 15,	
" "	21090	N. Y., L. E., W.	" 16,	
" "	15985	"	" 15,	
" "	26279	E. P. D.	" "	
" "	25670	Com. Ex.	" "	
" "	26778	E. P. D.	" "	
" "	20649	W. & E. D.	" "	
" "	1559	D. L.	" "	
" 15	479	B. L.	" 22,	
190				
1885.				
Oct. 15	28277	W. E. D.	Oct. 20,	
" 14	24235	E. N. S.	" "	
" "	6094	E. R'y	" 16,	
" "	23654	E. N. S.	" 28,	
" "	26165	E. P. D.	" 26,	
" 13	20605	W. E. D.	" 17,	
" "	28463	"	" 16,	
" "	28442	"	" 23,	
" "	23887	E. M. L.	" 20,	
" "	27136	"	" 16,	
" 17	24162	"	" 26,	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1885.				
Oct. 17	24000	E. M. L.	Oct. 22,	
" 19	28575	W. E. D.	" 27,	
" "	20729	"	" 26,	
" "	22388	Com. Ex.	" 23,	
" "	26650	E. & P. D.	" "	
" "	22287	Com. Ex.	" 22,	
" "	27881	N. Y., L. E., W.	" "	
" "	37563	Com. Ex.	" 26,	
" "	28544	E. N. S.	" 22,	
" "	28955	E. W. L.	" 24,	
" "	28375	W. E. D.	" 26,	
" "	14153	N. Y., L. E., W.	" 27,	
" "	37653	Com. Ex.	Nov. 2,	
" 20	394	B. L.	Oct. 23,	
" "	32628	G. R. R. N. G.	" 26,	
" "	27969	N. Y., L. E., W.	" 24,	
" "	28427	W. E. D.	" 26,	
" "	4399	L. V.	" 24,	
" 21	6105	E. R'y	" 26,	
" 22	29520	N. Y., L. E., W.	" 27,	
191				
1885.				
Oct. 22	3210	L. V.	Oct. 30,	
" "	25788	Com. Ex.	" 28,	
" "	20713	W. E. D.	" 31,	
" 23	3793	L. V.	" 30,	
" "	22177	Com. Ex.	" 27,	
" 26	35002	E. N. S.	" 31,	
" "	28280	W. E. D.	" 30,	
" 27	38320	N. Y., L. E., W.	Nov. 3,	
" "	25357	E. N. S.	Oct. 29,	
" "	20673	W. E. D.	" 30,	
" "	20780	"	" 31,	
" "	37347	N. Y., L. E., W.	" 31,	
" 30	11496	C., S. L.	Nov. 7,	
" 31	2639	L. V.	" 4,	
" "	28109	W. E. D.	" "	
" "	14792	C., S. L.	" 5,	
" 3	23487	E. N. S.	" 22,	
" "	25489	"	" "	
" "	25312	"	" 5,	
Nov. 3	34146	"	" 10,	
" 4	23490	"	" 7,	
" 7	11664	C., S. L.	" 19,	
" 9	4165	N. Y., L. E., W.	" 22,	
" "	4169	Erie	" 19,	
" "	36604	N. Y., L. E., W.	" "	
" 12	25729	Com. Ex.	Dec. 15,	
" "	15557	D. L.	Dec. 10,	
" "	30394	N. Y., L. E., W.	Nov. 22,	
" "	23561	E. D.	Dec. 9,	
" 19	1016	B. L.	Nov. 22,	
" "	2149	"	" "	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through the Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
192				
1885.				
Nov. 19	1525	C., S. L.	Nov. 25,	
" "	28151	C. N. S.	" 28,	
" "	36575	Com. Ex.	" 25,	
" 24	28548	W. E. D.	Dec. 5,	
" 25	14554	C., S. L.	" 2,	
" "	622	B. L.	Nov. 28,	
" "	840	"	" 30,	
" 27	28954	C. M. L.	Dec. 10,	
" 28	14585	C., S. L.	" 4,	
Dec. 2	2617	B. L.	" "	
" "	6265	"	" 5,	
" 4	37627	Com. Ex.	" 23,	
" "	20777	W. E. D.	" 22,	
" "	9022	C., S. L.	" 11,	
" "	11619	"	" 14,	
" 15	1281	M. D. T.	" 16,	
" 16	439	B. L.	" 21,	
" "	461	"	" 18,	
" "	7272	S. V. L.	" 19,	
" "	22470	Com. Ex.	" 28,	
" 18	400	M. D. T.	" 23,	
" 19	2580	M. D. T.	Jan. 8,	
" "	452	B. L.	" 18,	
" "	2248	"	Dec. 28,	
" "	819	"	Jan. 25,	
" "	455	"	" 8,	
" 21	1047	M. D. T.	Dec. 22,	
" "	2536	B. L.	" "	
" 22	434	"	" 26,	
" 23	4272	S. V. L.	" "	
" 24	637	B. L.	Jan. 18,	
193				
1885.				
Dec. 24	235	B. L.	Jan. 15	
" "	2253	M. D. T.	Feb. 6,	
" 28	1484	"	Jan. 30,	
" "	602	B. L.	Jan. 25,	
" 29	3014	M. D. T.	" 7,	
" "	1176	B. L.	" 5,	
1886.				
Jan. 22	496	"	Mar. 6,	
" "	475	M. D. T.	Jan. 28,	
" 28	815	B. L.	" 29,	
" 30	1112	"	Mar. 2,	
" "	2950	M. D. T.	Feb. 22,	
Feb. 1	4740	L. D.	" 8,	
" "	36816	N. Y., L. E., W.	Feb. 12,	
" 4	38566	E. D.	" 8,	
" 6	26996	N. Y., L. E., W.	" 10,	
" "	22686	E. D.	" "	
" "	25637	Com. Ex.	Feb. 10,	

The Toledo, Cincinnati and St. Louis Railroad. Record of Canada Southern Cars Run Through Ramsey Transfer—Continued.

Date received.	No. of car.	Initial.	Date delivered.	Remarks.
1886.				
Feb. 6,	22027	E. D.	Feb. 10,	
" "	24704	"	" 20,	
" "	25146	E. N. S.	" 10,	
" 8	22063	Com. Ex.	" 26,	
" "	1273	M. D. T.	" 10,	
" "	4681	N. Y., L. E., W.	" 18,	
" 9	499	B. L.	" 23,	
" "	22588	E. D.	March 3,	
" 10	349	B. L.	Feb. 19,	
" "	5012	L. V.	" 17,	
" 11	14729	C., S. L.	" "	
" "	14761	"	" 18,	
" "	2571	M. D. T.	" 25,	
194				
1886.				
Feb. 11	11301	C., S. L.	Feb. 16,	
" "	14624	"	" "	
" "	14750	"	March 6,	
" "	14573	"	Feb. 19,	
" "	2010	C., S. L.	" "	
" 18	23136	E. N. S.	" 27,	
" 19	22176	E. D.	Mar. 2,	
" "	37262	N. Y., L. E., W.	" "	
" "	14735	C., S. L.	" 3,	
" "	14641	"	Feb. 26,	
" "	11483	"	Mar. 4,	
" 20	376	B. L.	" 5,	
" "	2028	C. S. L.	" 9,	
" "	14659	"	" 4,	
" "	22049	E. D.	" 2,	
" "	24387	"	" 8,	
" "	22653	"	Feb. 25,	
" "	23563	"	" "	
" 25	24704	"	Mar. 2,	
" "	25146	E. N. S.	" 3,	
" "	25281	"	" 4,	
" "	29535	N. Y., L. E., W.	" 3,	
" "	30445	"	" "	
" "	25343	E. N. S.	" "	
" 27	30098	N. Y., L. E., W.	" 12,	
" "	25234	E. N. S.	" 3,	
" "	37415	N. Y., L. E., W.	" 4,	
" "	28121	W. E. D.	" "	
M'ch 2	28203	"	Mar. 18,	

195 I hereby certify that the above statement is correct.

J. A. WARING,
Ag't T., C. & St. L. R. R.

It is hereby stipulated that the foregoing is a statement of J. A. Warring, agent of the Toledo, Cincinnati and St. Louis Railroad Company, custodian of the record of Canada Southern cars run through the Ramsey transfer.

And the master shall consider said statement the same as if said Warring had been duly examined and testified to the same.

CLARENCE BROWN,
Sol'r for J. M. Quigley et al., Complainants.
J. A. IRVINE,
Solicitor for Petitioner.

Toledo, O., June 15th, 1886.

196 THE STATE OF OHIO, }
Van Wert County, } *ss:*

I, Horace A. Reeve, a notary public in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named John S. Wiers and George L. Higgins were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them subscribed, as above set forth, were reduced to writing by me in the presence of the said witnesses respectively, and were subscribed by the said witnesses respectively in my presence; that I am not counsel, attorney, or relative of either party, nor otherwise interested in the event of this suit. I further certify that the said witnesses, John S. Wiers and George L. Higgins, are both residents of the village of Delphos, Ohio, and reside more than one hundred miles from the place of trial of the above-entitled action.

In testimony whereof I have hereunto set my hand and notarial seal this third day of March, A. D. 1886.

HORACE A. REEVE, [SEAL.]
Notary Public, Van Wert, Co., O.

Depositions taken before me, Horace A. Reeve, a notary public within and for the county of Van Wert, in the State of Ohio, pursuant to the annexed notice, at the time and place therein specified, to be read in evidence on behalf of George William Ballou, intervening petitioner, in an action pending in the circuit court of the United States for the district of Indiana, wherein The Central Trust Company of New York *et al.* are plaintiffs and The Toledo, Delphos and Burlington Railroad Company *et al.* are defendants, and also in action pending in the said court, wherein

197 The Central Trust Company of New York *et al.* are plaintiffs and The Toledo, Cincinnati and St. Louis Railroad Company *et al.* are defendants.

Present: S. S. Wheeler, Esq., on behalf of said George William Ballou, trustee, intervening petitioner.

JOHN S. WIERS, of lawful age, being by me first duly sworn, as heretofore certified, deposes and says as follows:

1st Q. State your name, age. residence, and occupation.

A. My name is John S. Wiers; age, 47 years; by occupation car-builder; I reside at Delphos, Ohio.

2d Q. What is your present position?

A. I am foreman of the car shops, at Delphos, of the Toledo, Cincinnati and St. Louis railroad, under the receiver, J. C. McNulty.

3d Q. How long have you occupied this position?

A. About one year.

4th Q. State what position you occupied prior to becoming foreman of the car shops.

A. Master car-builder in the same shops.

5th Q. How long did you occupy the position of master car-builder?

A. About nine months.

6th Q. What position did you occupy prior to becoming master car-builder?

A. Foreman of the car shops.

7th Q. How long were you foreman of the car shops?

A. I think about 15 months.

8th Q. State whether you were employed at the T., C. & St. L. car shops during all the time you occupied the positions named above.

A. Yes, sir; at their shops in Delphos.

9th Q. When were you first employed in the shops at Del-
198 phos, and by whom?

A. I was first employed there on March 1st, 1883, by the Toledo, Cincinnati and St. Louis Railroad Company.

10th Q. Prior to the appointment of E. Dwight as receiver of the T., C. & St. L. R'y what knowledge, if any, did you have of a series of transfer trucks known as "Boston car trust, series A?"

A. I know there were such trucks in use on the main line of the T., C. & St. L. before the appointment of the receiver, but I don't know how many nor their condition.

11th Q. State what knowledge you had, if any, of the use, number, and condition of this same series of transfer trucks during the receivership of E. E. Dwight.

A. I had no knowledge.

12th Q. State what knowledge you had, if any, of the use, number, and condition of this same series of transfer trucks during the receivership of W. J. Craig.

A. Some of these trucks—I cannot say how many—were used after having wrecks on the road to repair broken and destroyed trucks under cars wrecked. The wheels and other parts of these transfer trucks were used at the shops to repair broken trucks. I cannot state how many were used to replace and repair other trucks. These transfer trucks were in general in good shape when Mr. Craig took possession as receiver, except those from which parts had been taken to repair other trucks.

13th Q. State what record, if any, was kept in your shop of the transfer trucks used to replace and repair other trucks.

A. No record at all was kept.

14th Q. State whether or not the practice you have here-
199 tofore referred to of using some of these transfer trucks in the shops at Delphos or out on the line in repairing and replacing other trucks was continued after John McNulty was appointed receiver.

A. The same practice was kept up.

15th Q. State whether or not you are cognizant with the different kinds of transfer trucks known as "Boston car trust series."

A. Yes, sir; I am.

16th Q. State whether or not you can distinguish the difference between the Boston car trust transfer trucks and those known as the Dayton and Southeastern transfer trucks.

A. I can distinguish the difference.

17th Q. Was any record ever kept of the use of the Boston car trust transfer trucks?

A. There was no record kept. We used the Boston car trust trucks and the Dayton and Southeastern trucks indiscriminately.

18th Q. What knowledge, if any, have you of the present condition of these transfer trucks known as "Boston car trust, series A?"

A. I cannot say as to their condition, because very few of them come into the shops.

JOHN S. WIERS.

Also GEORGE L. HIGGINS, of lawful age, being by me first duly cautioned and sworn, as herein certified, deposes and says as follows:

1st Q. State your name, age, occupation, and place of residence.

A. My name is George L. Higgins; I reside in Delphos, Ohio; by occupation agent of the Pennsylvania Company, at
200 Delphos, and my age is sixty-seven years.

2nd Q. State how long you have been agent of the Pennsylvania Company at Delphos.

A. I have been agent of the company ever since it leased the Pittsburgh, Ft. Wayne and Chicago railroad, and for more than ten years last past.

3rd Q. State whether or not on August 12th, 1880, you received P. R. R. freight car No. 36988; and, if so, what it contained and to whom its contents were delivered.

A. I did. It was loaded with twelve narrow-gauge trucks, consigned to Toledo, Delphos and Burlington Railroad Company, and I delivered the same to the agent of the said company at Delphos on the same day.

4th Q. State whether or not on August 16th, 1880, you received P. R. R. freight car No. 35239; and, if so, what it contained and to whom its contents were delivered.

A. I did. It contained twelve narrow-gauge trucks, consigned to the Toledo, Delphos and Burlington Railroad Company at Delphos, and were delivered to said company same day.

5th Q. State whether or not on August 23rd, 1880, you received P. R. R. freight car No. 36099; and, if so, what it contained and to whom the contents thereof were delivered.

A. I did. It contained fourteen narrow-gauge trucks, consigned to Toledo, Delphos and Burlington Railroad Company, which were delivered to said company on the same day.

6th Q. State whether or not on August 24th, 1880, you received P. R. R. freight car No. 36936; and, if so, what it contained and to whom the contents were delivered.

201 A. I did. It contained twelve narrow-gauge trucks, consigned to Toledo, Delphos and Burlington Railroad Company at Delphos, which were delivered to said company on the same day.

7th Q. State whether or not on January 31st, 1881, you received P. R. R. freight car No. 17205; if so, what did it contain and to whom were contents delivered?

A. I did. It contained twenty-two narrow-gauge trucks, consigned to the Toledo, Delphos and Burlington Railroad Company, which were delivered to said company on the same day.

8th Q. State whether or not on February 1st, 1881, you received P. R. R. freight car No. 15672; and, if so, what did it contain and to whom was it consigned?

A. I did. It contained twelve narrow-gauge trucks, consigned to the Toledo, Delphos and Burlington Railroad Company, which were delivered to the said company on the same day.

9th Q. State whether or not on February 1st, 1881, you received P. R. R. freight car No. 5693; and, if so, what did it contain and to whom was it consigned?

A. I did. It contained thirteen narrow-gauge freight trucks, consigned to the Toledo, Delphos and Burlington Railroad Company, which were delivered to said company on the same day.

10th Q. State whether or not on August 20th, 1880, you received P. R. R. freight car No. 35511; and, if so, what did it contain and to whom was it consigned?

202 A. I did. It contained fourteen narrow-gauge trucks, consigned to Toledo, Delphos and Burlington Railroad Company at Delphos, which were delivered to said company on the same day.

11th Q. State whether or not all of the above cars marked P. R. R. were Pennsylvania railroad cars.

A. They were.

12th Q. State whether or not the contents of all of the above cars were consigned to the Toledo, Delphos and Burlington Railroad Company at Delphos; and, if so, whether or not you delivered all of the contents of said cars to said Toledo, Delphos and Burlington Railroad Company at Delphos, Ohio.

A. They were so consigned, and I so delivered the contents at Delphos, Ohio, acting as the agent of the Pennsylvania Company.

GEORGE L. HIGGINS.

203 In the Matter of the Intervening Petition of GEORGE WILLIAM BALLOU, Trustee.

Deposition of George S. Billmeyer, taken at the office of the Billmeyer and Small Company, in the borough of York, Pennsylvania, between the hours of 8 o'clock a. m. and 6 o'clock p. m. February 18th, 1886, in pursuance of the notice hereto attached, Elverton R. Chapman, Esq., appearing for George William Ballou, intervening petitioner.

GEORGE S. BILLMEYER, being produced and sworn, says:

Q. Mr. Billmeyer, will you be kind enough to give your name, residence, and occupation?

A. My name is George S. Billmeyer; residence, York, Pennsylvania; I am secretary of the "Billmeyer and Small Company," carbuilders.

Q. How long have you been connected with the "Billmeyer-Small Company?"

A. Since the incorporation, December 18th, 1876.

Q. Do you remember of the manufacture and shipment of rolling stock for use on the Toledo, Delphos and Burlington railroad?

A. I remember the manufacture and shipment of the said rolling stock during the year 1880.

Q. What rolling stock was so manufactured and shipped?

A. Fifty flat cars during the early part of 1880 and fifty sets, or one hundred, transfer trucks, fifteen tons, during August, 1880.

Q. Who supervised the manufacture and shipment of the one hundred transfer trucks?

A. I was the manager of the work, and also manifested or made all shipments of those trucks.

204 Q. How were these trucks numbered and marked by you?

A. They were numbered from 2037 to 2136, inclusive.

Q. How were the transfer trucks shipped, to whom, and to what point were they consigned? Please give the full details regarding the shipment, according to the best of your recollection.

A. The one hundred transfer trucks were shipped as follows: August 4th, 1880, care of James Irvine, Dayton, Ohio, twelve trucks, complete, Nos. 2037 to 2046, inclusive, 2059 and 2060, loaded on Pennsylvania railroad gondola No. 36158; August 5th, 1880, twelve trucks, complete, 2061 to 2072, inclusive, loaded on Pennsylvania gondola 15576, also shipped to James Irvine, Dayton, Ohio; also on the same day loaded on Pennsylvania railroad gondola No. 36299 twelve trucks, complete, Nos. 2047 to 2058, inclusive, shipped to Dayton, Ohio, care of James Irvine; August 7th, 1880, we shipped twelve trucks to Delphos, Ohio, care of James Irvine, on Pennsylvania railroad gondola No. 36988, trucks numbered 2075 to 2086, inclusive; on August 10th, 1880, we shipped to Delphos, Ohio, care of James Irvine, twelve trucks, complete, Nos. 2087 to 2098, inclusive, on Pennsylvania railroad gondola No. 35239; August 14th, 1880, we shipped to Delphos, Ohio, care of James Irvine, fourteen trucks, Nos. 2099 to 2112, inclusive, on Pennsylvania railroad gon-

dola No. 35511; on August 17th, 1880, we shipped to Delphos, Ohio, care of James Irvine, fourteen trucks on Pennsylvania railroad gondola No. 36099; on August 18th, 1880, we shipped to Delphos, Ohio, care of James Irvine, twelve trucks, complete, Nos. 2073, 2074,
205 2127 to 2136, inclusive, on Pennsylvania railroad gondola No. 36936. The one hundred transfer trucks were shipped to the Toledo, Delphos & Burlington railroad.

Q. How were you paid for these trucks?

A. By a sight draft on George William Ballou & Company, New York, with bills of lading attached.

Q. Are you or is the corporation of the Billmeyer and Small Company interested in any way in any of the rolling stock formerly on the Toledo, Delphos and Burlington railroad or the Toledo, Cincinnati and St. Louis railroad or in any of the car-trust securities issued by either of those companies?

A. I am not; neither is our corporation.

Q. How much did George William Ballou and Company pay you for the one hundred transfer trucks referred to?

A. $245.00 per set of two trucks, or $12,250 for the two hundred trucks.

Q. Was that a fair and reasonable price at the time of the sale?

A. That was the lowest price offered for the contract, having three competitors for the same lot of trucks.

Q. By whom were you paid for the flat cars to which you have referred?

A. By three sight drafts on George William Ballou & Co., New York.

Q. How much were you paid for such flat cars?

A. $340.00 each, or $17,000.00 for the fifty cars.

Q. In the latter part of 1880 what were such box and coal cars as were specified by the Toledo, Delphos and Burlington Railroad Company worth in the market?

A. During the latter part of the year 1880 our company
206 offered to furnished their standard box car, fifteen tons capacity, at prices ranging from $450.00 each to $470.00 each, and gondolas, same capacity, not draft bottoms, $320.00 each to $335.00 each.

Q. As a car manufacturer of long experience what, in your opinion, should be the basis for determining the rental value of a pair of transfer trucks?

A. I would say two-thirds rental of either a flat car or box car. That being an average, of course, it would be a little high for rental for a flat car, but a low rental for a box car, taking into consideration the relative costs of the two kinds of cars, but it would be a fair average.

Q. If you were to construct and lease a lot of box cars, together with a lot of transfer trucks, if I understand you correctly, you would insist upon receiving as rental for the trucks two-thirds or about two-thirds of the rental that might be agreed upon for the box cars?

A. I would.

GEORGE S. BILLMEYER.

STATE OF PENNSYLVANIA, } ss:
York County, }

I certify that the foregoing deposition of George S. Billmeyer was taken before me at the time and place before stated and was signed in my presence.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my notarial seal this 18th day of February, A. D. 1886.

JNO. A. METZELL,
Notary Public.

STATE OF PENNSYLVANIA, } ss:
County of York, }

I, Samuel B. Hoff, prothonotary of the court of common
207 pleas of said county of York, in said State, the said court being a court of record and law and having a clerk and seal, do hereby certify that Jno. A. Metzell, Esq., before whom the above and foregoing deposition of George S. Billmeyer was taken, was at the time of his taking the same and still is an acting notary public in and for the said State of Pennsylvania, residing and having his place of business in the borough of York, in said State, duly commissioned and qualified, to all whose acts as such full faith and credit are and ought to be given, as well in all courts of justice as elsewhere; that his signature to the certificate to the deposition affixed — in his own proper handwriting.

In testimony whereof I have set my hand and affixed
[SEAL.] the seal of said court, at York, Pennsylvania, this 18th day of February, A. D. 1886.

S. B. HOFF,
Prothonotary.

208 *Testimony for Respondents.*

Taken before me on this 4th day of December, A. D. 1886, a notary public in and for Lucas county, Ohio, without notice and by consent of parties.

Present: James Irvine, Esq., for petitioner; Clarence Brown, Esq., for respondents.

NEAL MCKINNON, of lawful age, first being duly sworn, as hereinafter certified, was introduced as a witness on behalf of respondents and testified as follows:

Direct examination by Mr. BROWN:

Q. You may state if you have been in the employ of the receiver of the Toledo, Cincinnati and St. Louis Railroad Company and of the company prior to the receivership.

A. I was in the employ of Receiver Craig and Receiver McNulta, and was in the employ of the company in the fall of 1880 and up to December 1, 1881.

Q. Were you familiar with the books and records of the company and of the receivers?

A. With portions of them.

Q. Are you familiar with the equipment records in the car accountant's office?

A. I am.

Q. You may state, if you can, from what the schedules and statements which are about to be presented by you were made, and by whom they were made and under whose direction.

A. The schedules presented here were made—a portion of them by myself, some of them under my direction, and some of them by the master mechanic.

Q. And from what are they made?

209 A. They are made from the records and books of the company—a statement of the mileage and repairs of engines in series A, B, and C, Boston car trust, made from the records of the master mechanic's office. I will say in explanation of this, in relation to engine 13, that it was taken into the shops in February and March, 1883, and the repairs placed upon it up—that time had been none. It was burned out on the Dayton Division in January, 1884, and has made no record whatever since; has performed no service whatever since. Engine 14 was taken into the shops and repaired; come out of the shops June 23, 1883; $1,500 repairs placed on it. This engine was also burned out on the Dayton Division, and has made no movement whatever since. Engine 27 needed $800 repairs on it August 1, 1883. It was in a collision on the 5th of July, 1883.

Q. Aside from the explanation which you have given, state generally what this statement shows.

A. It shows the amount of money expended in repairs by the receiver from August 1, 1883, to August 1, 1884, and the amount of service in miles performed by those engines.

Q. That is, the amount expended for repairs on the engines named?

A. On the engines named in that schedule. The engines are numbered from 12 up to 27, inclusive (paper attached, marked Exhibit No. 1). A letter of Dec. 3, 1886, to N. McKinnon, signed Thomas Robertson, master mechanic, concerning engine 20, in series B, in Boston car trust. This is in reply to a message of mine to Thomas Robertson inquiring about that engine (marked Exhibit No. 2). A statement of passenger equipment in series C, Boston car trust, showing the number of days' service performed by the same from August 1st, 1883, up to August 1, 1884 (attached, marked Exhibit No. 3).

210 Mr. IRVINE:

Q. The statement No. 3 shows no record of days' service of any of these cars in September, October, and November, 1883, and very little in August, 1883. Was that because no record was kept of such service at that time?

A. Yes, sir.

WITNESS: A message from our master mechanic to myself, which is in answer to a message of mine enquiring about coach 17 (attached, marked Exhibit No. 4). Five sheets, comprising statement of the mileage of box, flat, and coal cars in series A, B, C, and D, Boston car trust (attached, marked Exhibit No. 5). A statement showing a computation of rentals of freight cars in Boston car trust, series A, B, C, and D, on southern divisions, on basis of one-half cent per mile for loaded miles (attached, marked Exhibit No. 6). Statement showing computations of rentals of freight cars in Boston car trust, series A, B, C, and D, for Toledo Terminal, Toledo Division, and St. Louis Division, on basis of ½ cent per mile—loaded mile (attached, marked Exhibit No. 7). A statement showing the flat cars in Boston car trust, series A, B, and D, destroyed prior to August 1, 1883; also the same sheet contains a statement of the flat cars in the same series which were not in existence on June 4, 1882, as per record of inventory — that date. There was an inventory taken on June 4, 1882, by the car accountant, T. A. Brock. On that inventory have been noted since the destruction of all cars that have been reported by the officers of the company, and the first list upon this statement shows the cars which have been destroyed appearing upon the record of that inventory as destroyed. The second list shows cars that were not included in that inventory out of existence prior to the time that inventory was taken, but were included in the original leases; and in regard to the second list I will say that none
211 of these cars have made any movement since the date of that inventory, going to show that they were out of existence prior to the date of that inventory (attached, marked Exhibit No. 8). A statement showing the box cars in Boston car trust, series A, B, C, and D, destroyed prior to August 1, 1883; also the box cars in existence June 4, 1882, as per record of inventory of that date. The same explanation applies to this sheet as given of Exhibit 8 (attached, marked Exhibit No. 9). A statement giving an additional list of freight cars in Boston car trust, series A, B, and D, which were worn out. Car 326, in Boston car trust, series A, shows upon our records of movement as at Dayton Nov. 11, 1882; went from there to Wellston April 29, 1883; used in construction on the Southeastern Division May 1, 1883; went to tunnel No. 1, on the Iron Division, July 14th, 1883; went to Ironton April 17th, 1884; to Colton May 18, 1884; to Chillicothe June 21, 1884, and has made no record since. The amount of service of this car indicates that it was worn out, practically, prior to the receivership and should be deducted from the cars on hand Aug. 1, 1883. Flat car 465, in Boston car trust, series B, makes no record in 1883 until July 9; was used in construction on the Iron Division at tunnel No. 1 on that day; went to Montezuma July 14, 1883, and makes no record since; has made no record during the receivership whatever. This car should also be deducted from those on hand August 1st, 1883. Flat car 506, Boston car trust, series D, is reported on the inventory of June 4th, 1882, as out of service June 26, 1884. This car was probably worn out and should be deducted from the cars on hand August 1st, 1883. Flat

car 531, Boston car trust, series D, was in service December,
212 1883; no movement again until May 17, 1884; in service up to June 19; out of service after that date. Flat car 545, Boston car trust, series D, is reported on the inventory of June 4, 1882, as out of service April 6, 1884, and reported destroyed in July, 1884. This car probably worn out. Box car 797, Boston car trust, series D, in service August 31, 1883; went to Charleston on January 23, 1884; made no movement since. This car made about 125 miles during the receivership. I will say this further, that our records do not show any evidence of these cars having been wrecked or damaged in any way. That one car reported destroyed, of course that was pulled down—out of service first and then destroyed afterwards (attached, marked Exhibit No. 10). Statement showing freight cars called for in leases of Boston car trust, series A, B, C, and D, shows the number destroyed prior to August 1st, 1883; number missing and not on inventory of June 4, 1882; number on hand August 1st, 1883 (attached, marked Exhibit No. 11). A statement showing the location of cars on the 1st of August, 1884. The cars checked with red are the cars which were on the line from Toledo to East St. Louis. Those checked with a cross were those which were on the Cincinnati Northern, and all others were on the balance of the divisions. This statement is a copy of the records of the office; commences first with the lowest number and takes it up to the highest number as in use in the service of the receivers. I have only carried it up to 1691, as that number would include all numbers in Boston car trust, series A, B, C, and D (attached, marked Exhibit No. 12).

Cross-examination by Mr. IRVINE:

Q. You say you were in the service prior to the receivership. In what capacity were you in the service of the company?

A. I was in the service as secretary to the general manager.

Q. What were your duties?

213 A. I had charge of the correspondence chiefly.

Q. You were in the service of Receiver Craig and McNulta also—in what capacity?

A. As secretary.

Q. All of your railroad service has been in the line of office work, stenography, correspondent, and so on, hasn't it?

A. Yes; and telegraphing, car accounting, and some experience in the auditor's office—freight agent's work.

Q. Where did you serve as car accountant?

A. Upon this road chiefly.

Q. Since when.

A. Since the 1st of February, 1886. I will say, though, that on account of my connection with the management and transportation department that I am familiar generally with the workings of nearly all departments.

Q. Have you a list anywhere about your offices of what you call wild cars on your road?

A. You mean by wild cars cars not in car trusts?
Q. Yes.
A. We have a record of those cars; yes, sir.
Q. How many of them are there; do you recollect?
A. I couldn't tell exactly.
Q. Isn't it generally understood that a great many of those cars belong to car trusts and have got out from under car trusts by having their numbers changed in some way or another?
A. I never understood so; no, sir. I understand the contrary, that a great many of those cars have been placed in the car trusts, where they didn't belong.
Q. You never understood that a great many car-trust cars have got out of the car trusts by having the numbers changed, so
214 that the company now claim them?
A. No, sir; we have no record of that. We have of the contrary, though, that cars have got in car trusts—have been taken to replace car-trust cars destroyed, belonging to car trusts.
Q. How many cars have the company got now that they had before the receivership?
A. I couldn't tell you. We don't pretend to keep any track of anything except those that we have a claim upon by lease or purchase.
Q. Can you give me some kind of estimate of how many cars the company claims now?
A. They probably claim about a thousand cars, those leased and purchased altogether. They don't claim to know anything outside of that or to keep any track, except as cars pass into their hands from other lines. They keep a record of their movements until they get off their hands.
Q. I see in this statement 3 that you have given coach 16 marked changed to combination car No. 16, April 19, 1883, but you have no service opposite that car. Why is that?
A. It don't show any service there.
Q. Does your record show what became of either coach 16 or combination car 16?
A. They do; I have no doubt.
Q. Was the service of this car simply overlooked in here? You have given combination 8 and 9, but no 16 down on your list.
A. It is possible that the clerk may have overlooked putting in the service of that combination car.
Q. You haven't any personal knowledge as to whether these cars you mention have gone out of service or not?
A. Nothing further than what the records show.

(Signature waived.)

EXHIBIT No. 1.

"Mason's."

Engines, Series A.

	No. 12.		No. 13.		No. 14.		No. 15.		No. 16.		No. 17.		Total by month.	
	Repairs.	Mileage.	Repairs.	Mileage.	Repairs.	Mileage.	Repairs.	Mileage.	Repairs.	Mileage.	Repairs.	Mileage.	Repairs.	Mileage.
1883.														
Aug.	41 11	3,000	123 52	2,897	70 17	3,432	27 03	6,000	81	3,220	348 38		611 02	18,549
Sept.	2 77	2,590	104 22	2,668	29 83	2,770	107 47	4,197		3,000	632 71		877 00	15,225
Oct.	2 60		34 11		5 66		2 02	6,048			487 26	1,344	531 65	7,392
Nov.	47 38	74	1 20		44 83		1 68	5,760			4 37		99 46	5,834
Dec.								5,952						5,952
1884.														
Jan.	322 72	402	16 75	725	39 70	450	73 07	2,112	11 00	3,550	121 50	3,640	584 74	10,879
Feb.	37						405 35	530	1 80	5,800	17 52	3,210	425 04	9,540
March	121 27	1,232	50				90 62	3,296	90	1,920	24 07	3,600	237 36	10,048
April	127 61	3,012			68		11 00	3,000	40 90	1,860	39 85	2,040	220 04	9,912
May	20 70	2,464	5 06					3,060	19 70	1,620	11 20	1,860	56 66	9,004
June	1 57	2,085					1 10	3,030	9 86	1,725	89 06	2,100	101 59	8,940
July	17 35	1,245					10 45	3,014	84 63	660	10 99	1,290	123 42	6,209
Total	$705 45	16,104	$285 36	6,290	$190 87	6,652	$729 79	45,999	$169 60	23,355	$1,786 91	19,084	$3,867 98	117,484

THOS. ROBERTSON, *M. M.*

Exhibit No. 1.

"Hinkleys." *Engines, Series B.*

	No. 18.		No. 19.		No. 20.		No. 21.		No. 22.		No. 23.		Total by months.	
	Repairs.	Mileage.	Repairs.	Mileage.	Repairs.	Mileage.	Repairs.	Mileage.	Repairs.	Mileage.	Repairs.	Mileage.	Repairs.	Mileage.
1883.														
Aug.	38 43	2,368	30 48	2,712			473 26	1,104	127 10	2,700	27 95	2,900	697 22	11,784
Sept.	83 59	1,873	24 01	2,452			144 94	2,260	22 89	1,130	95	6,000	276 38	13,715
Oct.	19 56		66 07	2,266			45 77	2,632	43 27		35		175 02	4,898
Nov.	75 16	5,070	58 91	176			26 76	1,664	11 73				167 56	6,910
Dec.	23 63	5,863	13 18				167 00	1,826					203 81	7,689
1884.														
Jan.	72 17	756	677 22				103 44	1,711	61 37	5,460	271 33	2,200	1,185 53	8,127
Feb.	595 99		1,068 88	300	10 34		100 69	74	52 61	5,030	100 01	3,000	1,928 52	8,404
M'ch	354 26		62 80	860	39 48		37 82	1,425	26 72	3,120	57 90	1,140	578 98	6,545
Ap'l	421 06		102 44	116			64 79	544	67 24	2,880	103 39	250	758 92	3,790
May	23 83	696	15 81				14 00	518	37 87	1,920	52 21	2,280	143 72	5,414
June	7 79	1,167					29 54	370	35 83	2,370	38 86	1,260	112 02	5,167
July	7 65	477	46 60	300			13 64	674	5 94	1,560	4 35	900	78 18	3,911
Total	$1,723 12	18,270	$2,161 40	9,182	$49 82		$1,221 65	14,802	$492 57	26,170	$657 30	19,930	$6,305 86	86,354

THOS. ROBERTSON, *M. M.*

EXHIBIT 1.

"Porter valve."

Engines, Series C.

	No. 24.		No. 25.		No. 26.		No. 27.			
	Repairs.	Mileage.	Repairs.	Mileage.	Repairs.	Mileage.	Repairs.	Mileage.		
1883.										
Aug.	53 98	4,282	24 17	5,642	20 59	4,244	57 83	1,347	156 57	15,515
Sept.	1,141 59	846	42 68	4,960	8 93	3,996	12 80	------	1,206 00	9,802
Oct.	456 26	3,858	28 77	3,438	109 48	3,914	------	------	594 51	11,210
Nov.	94 15	2,640	36 13	4,154	43 58	3,956	------	------	173 85	10,750
Dec.	46 99	4,034	51 69	5,169	47 04	1,776	------	------	317 00	10,514
1884.										
Jan.	78 72	4,256	143 92	3,642	1,290 31	1,756	7 98	------	1,520 93	9,654
Feb.	50 76	2,944	54 21	3,806	61 19	4,062	------	------	166 17	10,812
M'ch	65 36	3,498	62 72	4,824	19 31	4,044	1 85	------	149 24	12,366
Ap'l	61 45	4,014	60 05	3,370	73 73	3,172	------	------	195 23	10,556
May	126 15	3,208	65 35	3,646	35 60	3,376	------	------	227 10	10,330
June	138 94	2,462	99 04	933	34 01	3,940	------	------	271 99	9,340
July	103 92	3,038	51 46	2,110	7 17	3,214	------	------	162 55	8,362
Total	$2,418 27	39,180	$720 19	45,234	$1,922 22	41,450	$80 46	1,347	$5,141 14	127,211

218 EXHIBIT No. 2.

Toledo, St. Louis and Kansas City railroad.

DELPHOS, O., *Dec.* 3, 1886.

N. McKinnon, Esq., Toledo, O.

DEAR SIR: Engine 20 was in the yard awaiting repairs March 1st, '83. She had been robbed of nearly everything and in very bad shape, and there was nothing done to her until after the sale of the south end; then she was one of the engines that was assigned to them, and they took it from here and run the Dayton shops with it. To have repaired it at that time it would have cost about $1,800.00, as there was so many parts missing.

Yours truly, THOS. ROBERTSON, *M. M.*

(Here follow tables marked pages 219, 220, 221, 222, 223, and 224.)

225 EXHIBIT No. 4.

M. S.

12, 4.

N. McK.:

It was put in the old shop prior to Aug. 1st, 1883, with the intention of overhauling, but nothing was done on it. It was in service, I think, up to the time of going in shop.

T. R.

EXHIBIT No. 5.

Service of Passenger Equipment in Series C, Boston Car Trust, August 1st, 1883, to Aug. 1, 1884.

Kind.	No.	1883. Aug.	1883. Sept.	1883. Oct.	1883. Nov.	1883. Dec.	1884. Jan.	1884. Feb.	1884. March.	1884. Ap'l.	1884. May.	1884. June.	1884. July.	1883 & 1884. Total No. days.
Coach	8					7 days	26 days	24 days	22 days	19 days	2 days	3 days	16 days	119 days
"	9	2 days				2 "	9 "	9 "	20 "	19 "	1 "	3 "	3 "	68 "
"	10					8 "	10 "	8 "	16 "	22 "	6 "	16 "	18 "	104 "
"	11	1 "				8 "	25 "	17 "	5 "	5 "	2 "	5 "	13 "	81 "
"	12	2 "				7 "	18 "	17 "	25 "	9 "	20 "	22 "	21 "	141 "
"	13	2 "				10 "	23 "	13 "	8 "	1 "	12 "	11 "	11 "	91 "
"	14	1 "				18 "	21 "	22 "	24 "	20 "	7 "	13 "	11 "	138 "
"	15	Burned up 2½ miles west of Decatur Nov. 28, 1882.												
"	16	Change d to combination car No. 16 April 19, 1883.												5 days
"	17	5 days					23 days	18 days	26 days	13 days	13 days	13 days	12 days	119 "
"	18	1 "				23 days	25 "	25 "	26 "	26 "	21 "	22 "	17 "	188 "
"	19	3 "											At Delphos July 28, '84.	75 "
"	20	3 "				2 "	13 "	17 "	26 "	5 "	8 "	1 "	24 days	63 "
Combination	8					5 "	9 "	2 "	1 "		1 "	13 "	3 "	75 "
"	9					2 "	4 "	18 "	25 "	13 "	6 "	4 "	5 "	53 "
Bgge. & exp.	4					4 "	6 "	4 "	18 "	9 "	3 "	4 "		43 "
"	5					1 "	26 "	2 "	6 "	5 "	2 "	1 "	19 "	142 "
"	6					10 "	27 "	24 "	18 "	21 "	8 "	15 "	21 "	147 "
"	7					1 "	18 "	17 "	25 "	23 "	20 "	22 "		

EXHIBIT No. 6.

Computation of Rental of Freight Cars in Boston Car Trust, Series "A," "B," "C," & "D," for Southern Divisions on Basis of ½ Cent per Mile for Loaded Miles.

	Loaded mileage.				Rental @ ½c. per mile.					
	Box.	Flat.	Coal.	Total.	Day. Div.	So. E. Div.	Iron Div.	Cin. Div.	Cin. Nor. Div.	Total.
Dayton Div., Feb'y 1st, '83, to Dec. 1st, '83	27,758	47,186	3,973	78,917	394 59					
Southeast. " " " " "	24,424	19,494	15,075	58,993		294 97				
Iron " " " " "	55	58		113			57			
Cincinnati Div., " " " " "	1,815	1,855	357	4,027				20 14		
Cin. Nor. " " " " "	1,455	624	297	2,376					11 88	
	55,507	69,217	19,702	144,426						$722 15
Dayton Div., Aug. 1st, '83, to Dec. 1st, '83	30,283	31,469	4,796	66,548	382 74					
Southeast. " " " " "	24,394	14,743	12,563	51,700		258 50				
Iron " " " " "	442	176	129	747			3 74			
Cincinnati Div., " " " " "	3,076	942	291	4,309				21 55		
Cin. Nor. " " " " "	6,743	1,095	561	8,399					42 00	
	64,938	48,425	18,340	131,703						658 53
Dayton Div., Dec. 1, '83, to Aug. 1, '84	29,009	34,625	4,916	68,550	342 75					
Southe. " " " " "	38,842	20,444	19,042	78,328		391 64				
Iron " " " " "	861	763	281	1,854			9 27			
Cincinnati Div., " " " " "	3,045	1,629	575	5,249				26 24		
Cin. Nor. " " " " "	6,070	3,023	979	10,672					53 36	
	78,427	60,483	25,743	164,653						823 36
	198,872	178,125	63,785	440,782	1,069 88	945 11	13 58	67 93	107 24	$2,203 74

GEORGE WILLIAM BALLOU, TRUSTEE.

EXHIBIT No. 7.

Computation of Rentals of Freight Cars in Boston Car Trust, Series "A," "B," "C," & "D," for Toledo Terminal, Toledo Div., & St. Louis Div., on Basis of ½ Cent per Mile for Loaded Miles.

	Loaded mileage.				Rental @ ½ % per mile.			
	Box.	Flat.	Coal.	Total.	Tol. Ter.	Tol. Div.	St. L. Div.	Total.
Tol. Ter. Div., Feb. 1st, '83, to Aug. 1st, '83	1,773	1,284	61	3,118	$15 59			
Toledo " " " " "	88,983	67,546	2,533	159,062		795 31		
St. L. " " " " "	46,317	18,929	1,615	66,861			334 31	
	137,073	87,759	4,209	229,041				$1,145 21
Tol. Ter. Div., Aug. 1, '83, to Dec. 1st, '83	1,831	420	90	2,341	11 70			
Toledo " " " " "	120,514	44,084	4,192	168,790		843 95		
St. L. " " " " "	117,949	16,788	2,520	137,257			686 29	
	240,294	61,292	6,802	308,388				1,541 94
Tol. Ter. Div., Dec. 1, '83, to Aug. 1, '84	2,217	1,155	102	3,474	17 37			
Toledo " " " " "	107,628	59,748	3,435	170,811		854 06		
St. Louis " " " " "	159,484	40,864	1,676	202,024			1,010 12	
	269,329	101,767	5,213	376,309				
	646,696	250,818	16,224	913,738	44 66	2,493 32	2,030 72	4,568 70

229 EXHIBIT No. 8.

Flat Cars in Boston Car Trust, Series "A," "B," & "D," Destroyed Prior to Aug. 1st, 1883.

No.	Series.	Place & date destroyed.
311	A	Out of service Aug. 3, 1883; destroyed, Delphos yard, Oct. 6, 1883.
336	"	Wrecked and destroyed at Chillicothe June 1st, 1883.
379	"	Out of service Feb. 28, 1883; torn down, Delphos y'd, Ap'l 24, 1883.
440	B	Torn down June, 1882; broken in two.
483	D	Torn down, Delphos, Nov. 20, 1882; wrecked; time & place unknown.
499	"	Demolished at Delphos Aug. 31, 1882. T., D. & I. car 28 changed to this No. & series Feb. 8, '83.
502	"	Wrecked Sept. 10, 1882, at Pleasant Mills. T., D. & I. car #36 changed to this No. & series Ap'l 3rd, 1883.
528	"	Torn down at Delphos July 28, 1882.
534	"	" " July 24, 1882.
542	"	" " Delphos Nov. 30, 1882; wrecked; time & place unknown.
549	"	Wrecked Sept. 10, 1882, at Pleasant Mills; destroyed. T., D. & B. car 14 changed to this No. 10, 8, '83.
551	"	Torn down July 13th, 1882.
553	"	Wrecked and burned up at Bluffton Dec. 30th, 1882.
557	"	Torn down at Delphos Oct. 10th, 1882.
559	"	Demolished Aug. 31st, 1882, at Delphos.
563	"	Torn down at Delphos Nov. 20th, 1882; wrecked; time & place unknown.
570	"	Destroyed at Dayton March, 1883.
578	"	Torn down July 14th, 1882.
		Flat cars not in existence June 4th, 1882, as per record of inventory of that date, some of which have been replaced by equipment belonging to the R. R. Co.:
383	B	Not on inventory June 4, 1882, & no record of movement since.
438	"	" " " " makes regular record up to May 2, 1882; noted on movement record, changed to 538 May 22, 1882; also notation "series B should not have been changed."
450	"	Not on inventory June 4, 1882; noted on record of movement of 1882, changed to 550 Mar. 10.
481	D	Not on inventory June 4, 1882 (makes record in Feb'y, 1882; nothing since).
487	"	T., D. & I. car 20 changed to this No. & series Dec. 6, 1882. Out of service May 7, '83; torn down, Delphos y'd, May 26, 1883.
496	"	T., D. & I. car 22 changed to this No. & series Mar. 10, 1883 (makes record in 1882).
500	"	T., D. & I. car 29 changed to this No. & series June 4, 1883 (makes record up to May, '82.
511	"	Not on inventory June 4, 1882; no record of movement of this car.
512	"	T., D. & I. car 42 changed to this No. & series Dec. 18, 1882.
513	"	T., D. & B. car #6 changed to this No. & series May 17, 1883.
519	"	Not on inventory June 4, '82; noted on record of movement of 1882, "construction Marion, 9, 30," at Delphos, Dec. 29, 1882; no record since.
521	"	Car 7 changed to this No. May 5, 1883.
530	"	Not on inventory June 4, '82. At Montana March 17, '82; at Malinta Ap'l 21, '82; no record since.
535	"	Not on inventory June 4, 1882. No record.
564	"	" " " " "
571	"	No record of original car. T., D. & B. car changed to this No. Dec. 9, 1882. Worn out & destroyed at Dayton May 12, '84.
230		
572	D	Not on inventory June 4, '82; no record.
580	"	" " " " "

231 EXHIBIT No. 9.

Box Cars in Boston Car Trust, Series "A," "B," "C," & "D," Destroyed Prior to August 1st, 1883.

No.	Series.	Date & place destroyed.
731	C	Out of service Nov. 30, '82. Torn down at Delphos shop March 12th, 1883.
732	"	Demolished Aug. 18, 1882.
734	"	Torn down at Delphos July 24, 1882.
737	D	Out of service Nov. 30, 1882. Torn down in Delphos yard Ap'l 17, 1883.
754	"	Out of service March 4, 1883. Torn down in Delphos yard Ap'l 26, 1883.
802	"	Out of service Nov. 30, 1882. Torn down in Delphos yard Ap'l 24, 1883.
818	"	Put to use as a sand-house Oct. 30th, 1882.
829	"	Out of service Feb. 9, 1883. Torn down in Delphos yard Ap'l 4, 1883.
844	"	Torn down July 24, 1882.
854	"	Destroyed in wreck at Greentown Mar. 3, 1883.
881	"	No top. Not in service since inventory. Torn down in Delphos yard Oct. 20th, '83.
884	"	Demolished July 15, 1882. Message from C. H. M. Sept. 11, 1883.
899	"	Torn down July 15, 1882.
900	"	Used as an office at Charleston July 18, 1883.
901	"	Wrecked in Delphos yard Ap'l 12, 1883. Torn down in Delphos y'd May 11, 1883.
908	"	Put to use as an oil-house Oct. 13, 1882.
		Box cars not in existence June 4th, 1882, as per record of inventory of that date:
892	D	Not on inventory June 4, 1882. (Last record at Delphos March 31, 1882.)
893	"	Not on inventory of June 4, 1882. (Last record at Delphos Mar. 7, 1882.)
906	"	Not on inventory of June 4, 1882. Notation on record of movement in 1882. Completely destroyed on Dayton Division. Car makes no movement in 1882.

232 EXHIBIT No. 10.

Additional List of Freight Cars in Boston Car Trust, Series "A," "B," & "D," Worn Out.

Flat, 326, B. C. T., series "A."—At Dayton Nov. 11, 1882; to Welleston Ap'l 29, 1883; in construction on Southeastern Division May 1st, 1883; to tunnel No. 1 (on Iron Div.) July 14, 1883; to Ironton Ap'l 17, 1884; to Coalton May 18, 1884; to Chillicothe June 21st, 1884; no record since.

Flat, 465, B. C. T., series "B."—Makes no record in 1883 until July 9; used in construction on Iron Div., at tunnel No. 1, on that day; to Montezuma July 14, 1883; makes no record since.

Flat, 506, B. C. T., series "D."—Out of service June 26, 1884; probably worn out.

Flat, 531, B. C. T., series "D."—In service Dec., 1883; no movement again until May 17, 1884; in service up to June 19; out of service after that date.

Flat, 545, B. C. T., series "D."—Out of service Ap'l 26, 1884; probably worn out; reported destroyed in July, 1884.

Box, 797, B. C. T., series "D."—In service August 31st, 1883; went to Charleston on January 23d, 1884; no movement since.

238 EXHIBIT No. 11.

Statement Showing Freight Cars and Trucks Called for in Leases, Boston Car Trust, Series A, B, C, & D; Number Destroyed Prior to August 1st, 1883; Number Missing Not on Inventory of June 4, 1882, & Number Remaining on Hand Aug. 1st, 1883.

Kind.	Series.	Builders.	Numbers called in leases. Numbered— From—	To—	Total.	Total No. destroyed & out of service prior to Aug. 1, '83.	Total No. missing, of which there is no record of destination.	Total No. remaining on hand Aug. 1, 1883.	
Flat	A	Billmeyer, Small & Co., 301 to 350; Barney & Smith, 351 to 380.	301	380	80	3		77	
"	B	Barney & Smith, 381 to 400; U. S. Rolling S'k Co., 401 to 480.	381	480	100	1	3	96	
"	D	Middletown Car W'k's.	481	580	100	14	15	71	
					280	18	18	244	
								4	Cars numbered 411, 435, 472, & 480 are duplicate Nos. with cars in series B.
					280			248	
Box	A	Pennock Bros.	557	566	10			10	
"	B		567	636		Not filled.			
"	C	Middletown Car W'k's.	712	736	25	3		22	
"	D	" " "	737	911	175	13	3	159	
					210	16	3	159	
Coal	C	U. S. Rolling St'k Co.	1500	1523	24			24	
Trucks	A		2037	2236	200				
"	B		2237	2258		Not filled.			

All of these trucks appear on the inventory of June 4, 1882. There were duplicate numbers at that time which have since been changed to correspond with Nos. given in the series, with the exception of one truck, No. 2173, which does not appear to have been changed. It should probably have been changed to 2193, as that No. is vacant.

There is no means of telling what trucks were on hand on the 1st of Aug., 1883, as no record has been kept of their movement, condition, location, &c.

234 EXHIBIT No. 12.

T., D. & L.	Coach	1	T., C. & St. L.	"	√20		
D. & S. E.	"	2	"	"	√21		
"	"	3	"	Caboose	√ 4		
T., D. & B.	"	√6	"	"	√A		
"	"	√7	"	"	√B		
"	"	8	"	"	√C		
"	"	9	"	"	√D		
"	"	10	"	"	√E		
"	"	11	"	"	√F		
"	"	12	"	"	√G		
"	"	13	"	"	√H		
"	"	14	"	"	√I		
"	"	17	"	"	√J		
"	"	18	T., D. & B.	Flat	√17		
"	"	19	"	"	√18		
"	"	20	"	"	√19		
"	"	√22	"	"	√20		
"	"	√23	"	"	√21		
"	"	√24	"	"	√22		
"	"	√25	"	"	√23		
"	"	√26	"	"	√25		
"	"	√28	"	"	√60		
"	"	√29	"	"	√61		
T., C. & St. L.	"	√40	"	"	√63		
"	"	√41	"	"	64		
"	"	√42	"	"	√65		
"	"	√43	"	"	66		
"	"	√44	"	"	67		
"	"	√46	"	"	√68		
"	"	√47	"	"	71		
"	"	√48	"	"	73		
"	"	√49	"	"	√76		
"	"	√51	"	"	√78		
"	"	√52	"	"	81		
"	"	√53	"	"	√82		
"	"	√54	"	"	√83		
"	"	√55	"	"	√85		
"	"	√56	"	"	√86		
"	"	√57	"	"	87		
"	"	√58	"	"	√88		
"	"	√59	"	"	89		
"	"	61	T., D. & K.	Flat	√90		
T., D. & B.	Comb.	√2	"	"	91		
T., C. & St. L.	"	3	"	"	√94		
D., T., S. E.	"	4	"	"	√95		
T., C. & St. L.	"	5	"	"	√98		
T., D. & B.	"	8	"	"	99		
"	"	9	"	"	100		
"	"	16	"	Box	124		
T., C. & St. L.	"	√27	"	"	127		
T., D. & B.	B., M. & Ex.	4	"	"	130		
"	"	5	"	"	√132		
"	"	6	"	"	√133		
"	"	7	"	"	√134		
"	"	√ 8	"	"	√135		
"	"	√ 9	"	"	136		
T., C. & St. L.	"	√16	"	"	138		
"	"	√17	"	"	√139		
"	"	√19	"	"	√141		

Check √ before a number, report mileage to W. J. Craig. Check × after No., report mileage to George Hafer. All others, report mileage to C. E. Henderson.

Exhibit No. 12—Continued.

T., D. & K.	Box	√142	T., D. & B.	Flat	351
"	"	√143	"	"	352
"	"	√144	"	"	353
"	"	145	"	"	354
"	"	√146	"	"	355
"	"	√148	"	"	356
"	"	151	"	"	357
"	"	√152	"	"	358
"	"	√155	"	"	359
"	"	√156	"	"	360
"	"	√157	"	"	361
"	"	√158	"	"	362
"	"	159	"	"	363
"	"	√160	"	"	364
"	Flat	√300	"	"	365
"	"	301	"	"	366
"	"	302	"	"	367
"	"	303	"	"	368
"	"	304	"	"	369
"	"	305	T., D. & B.	Flat	370
"	"	306	"	"	371
"	"	307	"	"	372
"	"	308	"	"	373
"	"	309	"	"	374
"	"	310	"	"	375
"	"	312	"	"	376
"	"	313	"	"	377
"	"	314	"	"	378
"	"	315	"	"	380
"	"	316	"	"	381
"	"	317	"	"	382
"	"	318	"	"	384
T., D. & B.	Flat	319	"	"	385
"	"	320	"	"	386
"	"	321	"	"	387
"	"	322	"	"	388
"	"	323	"	"	389
"	"	324	"	"	390
"	"	325	"	"	391
"	"	326	"	"	392
"	"	327	"	"	393
"	"	328	"	"	394
"	"	329	"	"	395
"	"	330	"	"	396
"	"	331	"	"	397
"	"	332	"	"	398
"	"	333	"	"	399
"	"	334	"	"	400
"	"	335	"	"	401
"	"	337	"	"	402
"	"	338	"	"	403
"	"	339	"	"	404
"	"	340	"	"	405
"	"	341	"	"	406
"	"	342	"	"	407
"	"	343	"	"	408
"	"	344	"	"	409
"	"	345	"	"	411
"	"	346	"	"	411
"	"	347	"	"	411
"	"	348	"	"	412
"	"	349	"	"	413
"	"	350	"	"	414

Exhibit No. 12—Continued.

T., D. & B.	Flat	415
"	"	416
"	"	417
"	"	418
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"	"	420
T., D. & B.	Flat	421
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"	"	423
"	"	424
"	"	425
"	"	426
"	"	427
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"	"	432
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"	"	467
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"	"	469
"	"	470
"	"	471
"	"	472
"	"	473
T., D. & B.	Flat	474
"	"	475
"	"	476
"	"	477
T., D. & B.	Flat	478
"	"	479
"	"	480
"	"	480
"	"	482
"	"	484
"	"	485
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"	"	524
"	"	525
"	"	526
"	"	527
T., D. & B.	Flat	529
"	"	530
"	"	531
"	"	536
"	"	537
"	"	538
"	"	539
"	"	540
"	"	541
"	"	543
"	"	544
"	"	546
"	"	547
"	"	548
"	"	549
"	"	550

Exhibit No. 12—Continued.

T., D. & B.	Flat	552	T., D. & B.	Box	744
"	"	554	"	"	745
"	"	555	"	"	746
"	"	556	"	"	747
"	"	558	"	"	748
"	"	560	"	"	750
"	"	561	"	"	751
"	"	662	"	"	752
"	"	555	"	"	753
"	"	566	"	"	755
"	"	567	"	"	756
"	"	568	"	"	757
"	"	569	"	"	758
"	"	573	"	"	759
"	"	574	"	"	760
"	"	575	"	"	761
"	"	576	"	"	762
"	"	577	"	"	763
"	"	579	"	"	764
T., C. & St. L.	Box	557	"	"	765
"	"	558	"	"	766
"	"	559	T., D. & B.	Box	767
"	"	560	"	"	768
"	"	561	"	"	769
"	"	562	"	"	771
"	"	563	"	"	772
"	"	564	"	"	778
"	"	565	"	"	774
"	"	566	"	"	775
"	"	√700	"	"	776
"	"	√701	"	"	777
"	"	√702	"	"	778
"	"	704	"	"	779
"	"	√705	"	"	780
T., D. & B.	Box	708	"	"	781
"	"	710	"	"	782
"	"	711	"	"	783
"	"	713	"	"	784
"	"	714	"	"	785
"	"	715	"	"	786
"	"	716	"	"	787
"	"	717	"	"	788
"	"	718	"	"	789
"	"	719	"	"	790
"	"	720	"	"	791
"	"	721	"	"	792
"	"	722	"	"	793
"	"	723	"	"	794
"	"	724	"	"	795
"	"	726	"	"	796
"	"	727	"	"	797
"	"	728	"	"	798
"	"	729	"	"	799
"	"	730	"	"	800
"	"	733	"	"	801
"	"	735	"	"	803
"	"	736	"	"	804
"	"	738	"	"	805
"	"	739	"	"	806
"	"	740	"	"	807
"	"	741	"	"	808
"	"	742	"	"	809
"	"	743	"	"	810

Exhibit No. 12—Continued.

T., D. & B.	Box	811	T., D. & B.	Box	879
"	"	812	"	"	880
"	"	813	"	"	882
"	"	814	"	"	883
"	"	815	"	"	885
"	"	816	"	"	886
"	"	817	"	"	887
"	"	819	"	"	888
T., D. & B.	Box	820	"	"	889
"	"	821	"	"	890
"	"	822	"	"	891
"	"	823	"	"	894
"	"	824	"	"	895
"	"	825	"	"	896
"	"	826	"	"	897
"	"	827	"	"	898
"	"	828	"	"	900
"	"	830	"	"	902
"	"	831	"	"	903
"	"	832	"	"	904
"	"	833	"	"	905
"	"	834	"	"	907
"	"	835	"	"	909
"	"	836	"	"	910
"	"	837	"	"	✓912
"	"	838	"	"	✓913
"	"	839	"	"	✓914
"	"	840	"	"	✓915
"	"	841	"	"	✓916
"	"	842	"	"	917
"	"	843	"	"	✓918
"	"	845	"	"	✓919
"	"	846	"	"	920
"	"	847	"	"	✓921
"	"	848	"	"	922
"	"	849	"	"	✓923
"	"	850	"	"	✓924
"	"	851	"	"	✓925
"	"	852	"	"	✓926
"	"	853	"	"	927
"	"	855	"	"	928
"	"	856	"	"	✓929
"	"	857	"	"	✓930
"	"	858	"	"	✓931
"	"	859	"	"	✓932
"	"	860	236 T., D. & B.	Box	934
"	"	861	"	"	935
"	"	862	T., D. & B.	"	936
"	"	864	"	"	937
"	"	865	"	"	938
"	"	866	"	"	939
"	"	867	"	"	940
"	"	868	"	"	941
"	"	869	"	"	942
"	"	870	"	"	943
"	"	871	"	"	944
"	"	872	"	"	945
"	"	873	"	"	946
T., D. & B.	Box	874	"	"	947
"	"	875	"	"	948
"	"	876	"	"	949
"	"	877	"	"	950
"	"	878	"	"	951

Exhibit No. 12—Continued.

T., D. & B.	Box	952	T., D. & B.	Box	1022
"	"	953	"	"	1023
"	"	954	"	"	1024
"	"	955	"	"	1025
"	"	956	"	"	1026
"	"	957	"	"	1027
"	"	958	"	"	1028
"	"	959	"	"	1029
"	"	960	"	"	1031
"	"	961	"	"	1032
"	"	962	"	"	1033
"	"	963	"	"	1034
"	"	964	"	"	1035
"	"	965	"	"	1036
"	"	966	"	"	1042
"	"	967	"	"	1043
"	"	968	"	"	1046
"	"	969	"	"	1048
"	"	970	"	"	1049
"	"	971	"	"	1050
"	"	972	T., C. & St. L.	Box	1050
"	"	973	"	"	1053
"	"	974	"	"	1054
"	"	975	"	"	1055
"	"	976	"	"	1056
"	"	978	"	"	1058
"	"	979	"	"	1060
"	"	980	"	"	1061
"	"	981	"	"	1062
"	"	982	"	"	1065
"	"	983	T., D. & B.	Flat	1404
"	"	984	"	"	1442
T., D. & B.	Box	985	"	Coal	1500
"	"	986	"	"	1501
"	"	987	"	"	1502
"	"	988	"	"	1503
"	"	989	"	"	1504
"	"	990	"	"	1505
"	"	991	"	"	1506
"	"	997	"	"	1507
"	"	998	"	"	1508
"	"	999	"	"	1509
"	"	1000	"	"	1510
"	"	1002	"	"	1511
"	"	1003	"	"	1512
"	"	1004	"	"	1513
"	"	1005	"	"	1514
"	"	1006	"	"	1515
"	"	1007	"	"	1516
"	"	1008	"	"	1517
"	"	1009	"	"	1518
"	"	1010	"	"	1519
"	"	1011	"	"	1520
"	"	1012	"	"	1521
"	"	1013	"	"	1522
"	"	1014	"	"	1523
"	"	1016	"	"	1524
"	"	1017	"	"	1525
"	"	1018	"	"	1526
"	"	1019	"	"	1527
"	"	1020	"	"	1528
"	"	1021	"	"	1529

Exhibit No. 12—Continued.

T., D. & B.	Coal	1530		T., D. & B.	Coal	1595	
"	"	1531		"	"	1596	
"	"	1533		"	"	1597	
"	"	1534		"	"	1598	
"	"	1535		"	"	1599	
"	"	1536		"	"	1600	
"	"	1537		"	"	1601	
"	"	1538		"	"	1602	
T., D. & B.	Coal	1539		"	"	1603	
"	"	1540		"	"	1604	
"	"	1541		"	"	1605	
"	"	1542		"	"	1606	
"	"	1543		"	"	1607	
"	"	1544		"	"	1608	
"	"	1546		"	"	1610	
"	"	1547		"	"	1611	
"	"	1548		"	"	1612	
"	"	1549		"	"	1613	
"	"	1550		"	"	1614	
"	"	1551		"	"	1615	
"	"	1552		"	"	1616	
"	"	1553		"	"	1617	
"	"	1554		"	"	1618	
"	"	1555		"	"	1619	
"	"	1556		"	"	1620	
"	"	1557		"	"	1621	
"	"	1558		"	"	1623	
"	"	1559		"	"	1623	
"	"	1560		"	"	1624	
"	"	1561		"	"	1625	
"	"	1562		"	"	1626	
"	"	1563		"	"	1627	
"	"	1564		"	"	1628	
"	"	1565		"	"	1629	
"	"	1566		"	"	1630	
"	"	1567		"	"	1631	
"	"	1568		"	"	1632	
"	"	1569		"	"	1633	
"	"	1570		"	"	1634	
"	"	1571		"	"	1635	
"	"	1572		"	"	1636	
"	"	1573		"	"	1637	
"	"	1574		"	"	1638	
"	"	1575		"	"	1639	
"	"	1576		"	"	1640	
"	"	1577		"	"	1641	
"	"	1578		T., D. & B.	Coal	1642	
"	"	1579		"	"	1643	
"	"	1580		"	"	1644	
"	"	1581		"	"	1645	
"	"	1582		"	"	1646	
"	"	1583		"	"	1647	
"	"	1584		"	"	1648	
"	"	1585		"	"	1649	
"	"	1586		"	"	1650	
"	"	1587		"	"	1651	
"	"	1588		"	"	1652	
"	"	1589		"	"	1653	
T., D. & B.	Coal	1590		"	"	1654	
"	"	1591		"	"	1655	
"	"	1592		"	"	1656	
"	"	1593		"	"	1657	
"	"	1594		"	"	1658	

Exhibit No. 12—Continued.

T., D. & B.		Coal		1659	T., D. & B.	Coal	1676
"		"		1660	"	"	1677
"		"		1661	"	"	1678
"		"		1662	"	"	1679
"		"		1663	"	"	1680
"		"		1664	"	"	1681
"		"		1665	"	"	1682
"		"		1666	"	"	1683
"		"		1667	"	"	1684
"		"		1668	"	"	1685
"		"		1669	"	"	1686
"		"		1670	"	"	1687
"		"		1671	"	"	1688
"		"		1672	"	"	1689
"		"		1673	"	"	1690
"		"		1674	"	"	1691
"		"		1675			

237 *Affidavit of Neil McKinnon.*

UNITED STATES OF AMERICA, }
Northern District of Ohio, } *ss:*

Neil McKinnon, being duly sworn, on oath deposes that he attaches hereto and marks Exhibit A what he is informed is a correct copy of a portion of the order of this court of November, 1884, relating to the equipment mentioned in the claim of said Ballou, trustee.

He farther says that at the time of making this order and thereafter to the end of Mr. Craik's administration as receiver affiant was the secretary of said William J. Craig, receiver of the Toledo and St. Louis Divisions of the Toledo, Cincinnati and St. Louis railroad.

This affiant further states that, in accordance with said order, the said William J. Craig, receiver, did notify the intervening petitioners and holders of car-trust leases, including said Ballou, trustee, as provided in said order, that their cars were subject to their order and would be delivered to them at such point or points on the line of the railroad as they might severally select.

Affiant says that such notice was given directly after the making of the order in December, 1884, and in ample time for such owners and trustees to designate the point or points at which they would receive their cars on or before the following January.

Attached hereto, marked Exhibit B, is a copy of the notice sent to the claimant, George William Ballou, trustee, by Receiver Craig. There is also attached hereto and marked Exhibit C a letter from Elverton R. Chapman, the attorney for said George William Ballou, trustee, asking for storage room. There is also attached hereto
238 and marked Exhibit D a copy of a letter from W. J. Craig, receiver, to said E. R. Chapman in reply to said application for storage room.

Affiant says that he enclosed with each notice a copy of the order the same as attached to this affidavit.

Affiant says that he was present during conversations between

Craig and owners and holders of car-trust leases held at various times relating to the storage of their cars, and that his recollection is that the conclusion reached in such conversations was that the use of said cars by the receiver should be compensation for their storage.

NEIL McKINNON.

Sworn to before me and subscribed in my presence the 17th day of January, 1887.

HALLIE W. BROWN,
U. S. Cir. C't Com., N. D. O.

EXHIBIT "A."

In the circuit court of the United States, at a hearing held at Indianapolis, Ind., Dec. 1st, 1884, Judges Gresham and Woods sitting, the following order was made in regard to the leased equipment on the Toledo, Cincinnati & St. Louis railroad. Said order is entered in all suits relating to the foreclosure of the mortgages on the Toledo and St. Louis Divisions of said road in Ohio, Indiana, and Illinois.

Copy of so Much of said Order as Relates to Rolling Stock.

1st. That the several contracts under which the said intervening petitioner and other holders of car-trust leases delivered the certain engines, cars, and equipments mentioned and set forth in their several intervening petitions and in their several exceptions to said master's report and in the testimony taken before said master were and are contracts of conditional purchase and sale of said engines and equipment.

239 2nd. That no such demand has been made by said intervening petitioners or other holders of car-trust leases or any or either of them to retake possession of their said engines, cars, and equipment, and no such refusal to grant possession thereof has been made by the court or its receiver as to work a conversion of said engines, cars, and equipment or any part thereof, and that there is no legal or equitable obligation resting upon the court and its receiver to specifically perform and comply with the terms and obligations of said contract of conditional purchase and sale.

3rd. That said intervening petitioners and other holders of car-trust leases and each of them are entitled to the immediate possession of their said engines, cars, and equipment.

It is therefore ordered and decreed by the court that the said receiver do, on or before the first day of January, A. D. 1885, surrender and deliver to the said several intervening petitioners and to such other holders of car-trust leases or on their order, at such point or points on the line of the railroad now in the possession of said receiver as they shall severally select, all locomotives, tenders, cars, and equipment known by said receiver to belong to and be the property of said intervening petitioners and such other holders of car-trust

leases, said receiver giving to them due notice of his readiness to surrender and deliver possession of said locomotives, tenders, cars, and equipment.

It is further ordered by the court that said receiver shall, prior to the delivery of said engines, cars, and equipment, cause the same to be carefully and thoroughly inspected as to their then condition and repair; that said inspection *to* be reduced to writing, giving an itemized statement of the condition and repair of each piece of
240 said equipment and of the cost of repairs to put the same in as good condition as at the time of sale and delivery, ordinary wear and tear excepted, needed thereon, and that said receiver report to this court from time to time his surrender and delivery of said engines, cars, and equipment, and that he file with said reports an itemized statement of the inspection thereof and needed repairs thereon.

The question of the amount of rental to be paid for the use of said engines, cars, and equipment and of the time for which rent shall be computed, and the question of the amount, if any, of damages to be recovered by said petitioners and such other holders of car-trust leases for lack of repairs and replacements of said equipment and the time for which such damages, if any, shall be computed, and the question of the amount to be paid for the loss or destruction of any of such equipment, * * * are now especially reserved by the court for further consideration and decision.

This order is made without any prejudice to any claim or claims the said several intervening petitioners and other holders of car-trust leases may have against the said receiver or any other person or persons growing out of their claims hereby reserved by the court for further consideration and decision.

EXHIBIT "B."

TOLEDO, O., *Dec. 8th*, 1884.

Geo. Wm. Ballou, Esq., & F. M. Holmes, Esq., trustees, No. 8 Wall St., New York.

GENTLEMEN: I enclose you herewith copy of the order made by Judges Gresham and Woods at Indianapolis on the 1st instant. In accordance with the directions herein contained you are hereby notified that the rolling stock, for which you are trustees, upon
241 the Toledo, Cincinnati & St. Louis railroad is at your disposal.

We are prepared to make the inspection directed by the court and request you to send here immediately some one who shall represent you in the inspection.

You will please make such provision as you may deem best for the future care of said rolling stock. Please acknowledge receipt of this communication.

Very respectfully, WILLIAM J. CRAIG, *Receiver*.

EXHIBIT "C."

8 WALL STREET, NEW YORK, *Dec. 22d*, 1884.

W. J. Craig, Esq., receiver, &c., Toledo, Ohio.

DEAR SIR: Referring to your letter of the 8th instant addressed to Messrs. Holmes and Ballou, I have to request that if you can do so without any inconvenience I would thank you to place upon a side track at Delphos separate from any other equipment such cars as you may have belonging to this trust and hold them subject to our order.

If you cannot under the order of court do this please deliver them to the purchasers of the Dayton and Southeastern Division at Delphos, taking their receipt therefor.

Truly yours, E. R. CHAPMAN,
Gen'l Man.

EXHIBIT "D."

TOLEDO, O., *Jan'y 28th*, 1885.

E. R. Chapman, Esq., 8 Wall St., New York.

242 DEAR SIR: Yours received. There are no tracks on the main line except our regular sidings, which are in constant use for the transaction of business. I think, however, there is no question but that I am entitled under the amended Braman bill to at least two miles of the Buckeye Furnace Branch at Wellston. That branch is eight miles long, 6 miles of which is claimed by the Delphos trust, and the other two miles was built by the consolidated company. The two miles I speak of is that portion farthest from Wellston, so that if cars were stored upon it there would be no interruption of the business of the remainder of the branch. Fairbanks would, no doubt, as leave deliver at Wellston as at Delphos. It would be better for all parties concerned for you to store on that branch in case you have a temporary squabble with Fairbanks, because then your cars would be kept together. If brought upon this line they might become scattered, as we would be compelled to move them around from time to time, not having any tracks which we could devote exclusively to the storage of cars. In any event I will do the best I can for you, but I don't see how it is possible to do as you have suggested.

Very truly, W. J. CRAIG, *Receiver.*
M.

Statement of standard cars run through the Ramsey transfer at C. S. Junction (Toledo) from August 3, 1883, to March 8, 1886, showing date cars were received from and date cars were delivered back to Mich. Cent. R'y.—John A. Warnig, agent.

It is hereby stipulated by counsel for complainants, Quigley, McNab, and Harbeck, and counsel for Geo. Wm. Ballou, trustee,

intervenor herein, that the statement hereto annexed is a cor-
243 rect statement taken from the books of the receiver of the number of narrow-gauge transfer trucks used by him at the Ramsey transfer at the city of Toledo, Ohio.

That the date at the left hand indicates when a standard-gauge car body was received from the Michigan Central R'y Co. and a pair of narrow-gauge transfer trucks put thereunder and the car body with two trucks sent on to the T., C. & St. L. R. R.

That the date at the right of each column indicates when the car body with the two trucks was received back at Toledo and the body redelivered to the Michigan Central R. R. Co.

March 8th, 1886.

CLARENCE BROWN,
Sol'r for Quigley et al., Comp's.
JAS. IRVINE,
Solicitor for Geo. Wm. Ballou, Trustee.

244

Date rec'd.	No. of car.		Date delivered.
1883.			
August 3	38817	N. Y., L. E. & W.	Aug. 13
	5161	D. L.	" "
	38182	W. & E. D.	" 13
	11133	C. S. L.	Oct. 1
	11312	"	Sept. 12
	14598	"	Aug. 31
	14617	"	" "
4	34162	E. & N. S.	Sept. 5
	34329	"	Aug. 24
	25010	"	" 13
	2424	"	" 17
	24294	"	" "
	24120	"	Oct. 27
5	20625	W. & E. D.	Aug. 11
	28485	"	" 13
	23924	E. & N. S.	" "
	23785	"	" "
	35009	"	" "
8	25149	"	" 11
	5022	D. L.	" 18
10	37612	N. Y. L. E.	" 15
	20942	E. & M. L.	" 17
	11186	C. S. L.	Sep. 12
	9054	"	" 14
13	9027	"	Aug. 15
	27171	E. & M. L.	" 17

Date rec'd.	No. of car.		Date delivered.
1883.			
August 13	25267	E. & N. S.	Aug. 23
	23209	"	" 17
	11276	C. S. L.	" 26
14	23384	E. & N. S.	" 24
	35023	"	" "
	24235	"	" 31
	11132	C. S. L.	Sep. 7
	11531	"	Aug. 24
	24112	E. & N. S.	" "
	28342	W. & E. D.	" "
16	23264	E. & N. S.	Sep. 7
	11655	C. S. L.	" "
	23002	E. & N. S.	Oct. 29
	35024	"	Sep. 5
	28559	W. & E. D.	Sept. 14
1883.			
Aug. 17	33565	E. & N. S.	Oct. 1
	33436	"	Aug. 26
	5084	D. L.	Sept. 5
	15576	"	Oct. 26
	25474	E. & N. S.	Sept. 27
	35022	"	" 5
21	14649	C. & S. L.	Aug. 29
22	25444	E. & N. S.	Sep. 1
	25028	"	" 1
24	14538	C. S. L.	" 7
25	36792	N. Y. L. E.	" 7
	5086	D. L.	" 1
	23308	E. & N. S.	" 5
	5019	D. L.	" 1
	24030	E. & N. S.	" 1
28	34026	"	" 5
	24224	"	Aug. 31
	1503	C. S. L.	" "
30	28283	W. & E. D.	Sep. 7
	24279	E. & N. S.	" 5
	5147	D. L.	" "
Sept. 1	11501	C. S. L.	Oct. 10
	11519	"	Sep. 12
	2089	"	" "
	15581	D. L.	" 24
	12335	H. T. L.	" 12
3	25185	E. & N. S.	" 22
	34029	"	" 18

Date rec'd.	Car.		Date delivered.
1883.			
Sept. 3	24208	E. & N. S.	Sep. 17
5	11105	C. S. L.	Oct. 11
	23663	E. & N. S.	Sep. 7
8	23071	"	" 27
	28343	W. & E. D.	" 17
10	15161	C. S. L.	" 25
	25237	S. & N. S.	Oct. 11
	7578	P. & G.	Sep. 17
	24182	E. & N. S.	Oct. 5
12	5208	C. S. L.	" 19
	17140	"	" 17
14	5028	D. L.	Sep. 22
	5029	"	" "
245			
1883.			
Sept. 14	24225	E. N. S.	Sept. 22
	11596	C. S. L.	" 25
16	2628	B. L.	Oct. 1
	1108	M. D. T.	Sep. 20
18	11226	C. S. L.	" 24
	9044	"	" 21
19	34047	E. & N. S.	" 27
	4402	L. V.	Oct. 1
	2345	E. & M. L.	" 25
	9089	C. S. L.	" 5
	14581	"	Sep. 27
	2028	"	" 28
	23432	E. & N. S.	" 24
	23598	"	Oct. 1
	11158	C. S. L.	Sep. 27
	5643	D. L.	" 24
	23336	E. & N. S.	Oct. 1
	22982	"	Sep. 21
22	11210	C. S. L.	" 28
	17006	"	Oct. 22
	28150	W. E. D.	" "
24	24143	E. & N. S.	" 19
	37083	N. Y. L.	" "
	34174	E. N. S.	" 1
	17148	C. S. L.	" 22
	11658	"	" 6
	2365	N. W. T.	" 20
	23569	E. N. S.	Nov. 5

Date rec'd.	Car.		Date delivered.
1883.			
Sept. 24	25144	E. N. S.	Oct. 1
	23446	"	" 1
25	11488	C. S. L.	" 14
26	11602	"	Nov. 3
27	14504	"	Oct. 11
	14518	"	Nov. 5
	11283	"	Oct. 14
	4776	"	" 10
28	5391	S. L. W.	" 5
	34051	E. N. S.	" 1
29	2338	E. M. L.	" 12
	10334	D. L. W.	" 5
	2338	E. M. L.	" "
Oct. 1	2714	P. N. Y.	Oct. 23
	4129	L. V.	" 10
	2373	E. N. S.	" "
2	34057	"	" "
	5020	D. L.	" 8
	23375	E. N. S.	" "
	35614	"	" "
			1884.
	2013	C. S. L.	Ap'l 4 empty
			1883.
5	11493	"	Oct. 8
	14616	"	" "
8	4381	L. V.	" 12
	3981	"	" 20
	23337	E. N. S.	" "
	3423	L. V.	" "
11	2673	M. D. T.	Nov. 30
	11483	C. S. L.	Oct. "
	29955	N. Y. L.	" 14
	25461	E. N. S.	" "
	23769	E. N. S.	" 17
	28409	W. E. D.	" 23
	23971	E. & N. S.	" 20
17	11175	C. S. L.	" 26
	11337	"	" 20
	5172	D. L.	" 23
	5147	"	" "
22	28388	W. E. D.	" 26
	34070	E. N. S.	" "
24	14306	N. Y. L.	Nov. 1

Date rec'd.	Car.		Date delivered.
1883.			
Oct. 24	25232	E. N. S.	Nov. 1
	25432	"	Oct. 27
	34156	"	" 27
26	23751	E. M. L.	Nov. 5
	29122	"	" 1
	34056	E. N. S.	" 5
	20791	W. E. D.	" 2
	11669	C. S. L.	" 1
29	25448	E. N. S.	Oct. 29
	22314	C. Ex.	Nov. 2
	27107	E. N. S.	" 5
	11134	C. S. L.	" 24
	17119	"	" "
246			
1883.			
Oct. 30	14624	C. S. L.	Nov 29
	34159	E. N. S.	" 1
	5252	D. L.	" 3
	14721	N. Y. L.	" 2
	3645	L. V.	" "
	24056	E. N. S.	" "
Nov. 1	17071	C. S. L.	Dec. 6
" 7	23455	E. & N. S.	Nov. 16
" 14	28142	W. & E. D.	" 24
	23555	E. N. S.	" "
	23997	E. M. L.	" 23
	25396	E. N. S.	" 19
	5035	D. L.	" 19
	25345	E. N. S.	" "
	28561	W. E. D.	" "
	15561	D. L.	" "
	20630	W. E. D.	" 23
	23721	E. M. L.	" 21
16	24297	E. N. S.	" 20
	23417	"	" 24
	5029	I. L.	" 20
	25013	E. N. S.	" "
	28523	W. & E. D.	" "
	34185	E. N. S.	" 24
	25218	"	" 20
	25381	"	" "
	23137	"	" 24
21	28174	W. & E. D.	" 24

Date rec'd.	Car.		Date delivered.
1883.			
Nov. 21	28484	W. & E. D.	Dec. 4
	2602	B. L.	Nov. 24
	3110	"	" 30
23	28250	W. E. D.	" "
	20910	E. M. L.	Dec. 4
28	30528	N. Y. L.	" 8
28	27010	"	" 4
	25334	E. N. S.	" 3
Dec. 1	23057	"	" 4
	24205	"	" 4
	23058	"	" "
	23879	E. M. L.	" 5
	695	B. H. T. W.	" "
1883.			
Dec. 4	25232	E. N. S.	Dec. 8
	34110	"	" "
" 5	20638	W. E. D.	" "
	23786	E. M. L.	" "
	25555	C. Ex.	" 18
	23692	E. N. S.	" 12
	23293	"	" "
	34123	"	" 11
			1884.
" 6	24084	"	Jan'y 9
			1883.
" 12	23477	"	Dec. 17
	10567	B. L.	" 15
	1247	"	" "
	28444	W. E. D.	" "
	25228	E. N. S.	" 14
" 15	9103	C. S. L.	" 24
	11251	"	" "
" 17	2447	B. L.	" 19
	395	"	" "
	3562	"	" "
	2525	C. S. R.	" 20
" 18	30318	N. Y. L.	" 22
	24078	E. N. S.	" 22
			'84.
" 19	2649	M. D.	Jan. 22
	25457	E. N. S.	" 7
	23832	E. M. L.	" 9
	39914	N. Y. L.	Feb'y 2

Date rec'd.	Car.		Date delivered.
1883.			'84.
Dec. 19	6128	Erie	Jan'y 22
			18'3.
" 20	230	B. L.	Dec. 22
	369	"	" "
	37397	N. Y. L.	" 21
	6356	"	" "
			18'4.
" 24	23533	E. N. S.	Jan. 2
	30087	N. Y. L.	" "
			'83.
" 26	36735	"	Dec. 28
	38629	"	" "
	36875	"	" "
			'84.
" 28	3080	B. L.	Jan'y 2
	2694	"	" "
	27962	N. Y. L.	" 9
	30465	"	" 15
	30241	"	" 9
247			
1883.			1884.
Dec. 31	14555	C. S. L.	Jan'y 11
	17069	"	" 9
1884.			
Jan'y 2	1263	M. D. F.	Feb. 2
	739	"	Jan'y 28
	1112	B. L.	" 22
	29752	N. Y. L.	" 11
	36884	"	" 15
	27951	"	" 22
	36783	"	" 29
" 12	29068	"	" 28
	425	B. L.	" 15
	811	"	Feb'y 2
	2350	"	" 9
	3058	"	" 13
" 17	29412	N. Y. L.	Jan'y 25
	28370	W. E. D.	" "
" 24	5038	D. L.	Feb'y 9
	24284	E. N. S.	" 2
	24003	"	" "
Feb'y 2	27571	N. Y. L.	" 28
	29778	"	" 15

Date rec'd.	Car.		Date delivered.
1884.			
Feb'y 2	23171	E. N. S.	Feb'y 15
" 5	28246	W. E. D.	" 13
	5044	D. L.	" "
	23426	E. N. S.	" "
" 6	11648	C. S. L.	" 16
	4412	N. Y. L.	M'ch 15
	15223	"	" 17
	29415	"	" 21
" 13	14569	C. S. L.	Feb'y 16
	27112	E. M. L.	M'ch 8
	36603	N. Y. L.	Feb'y 23
	38528	"	M'ch 3
	29705	"	Feb'y 23
	27815	"	" 16
" 28	25105	E. N. S.	M'ch 12
	27813	N. Y. L.	" 20
	25177	E. N. S.	Ap'l 2
	25301	"	M'ch 8
M'ch 8	25166	"	" 17
	23309	"	" "
1884.			
M'ch 8	23096	E. N. S.	M'ch 17
" 13	11560	C. S. L.	" 19
	11139	"	" 21
" 17	753	W. D. F.	" 22
	1321	"	" 21
" 19	6031	E R.	" 25
	28541	E. N. S.	" "
	27030	N. Y. L.	" "
	6085	E. R.	" 22
	28573	W. E. D.	" "
	37960	N. Y. L.	" 25
	30096	"	" "
	28306	W. E. D.	" "
" 20	11129	C. S. L.	" 24
" 24	23896	E. N. L.	Ap'l 8
	25899	E. P. D.	" 5
	2026	B. L.	" 3
	1210	W. D. F.	" "
	1712	"	M'ch 27
	2079	"	" "
" 29	9020	C. S. L.	Ap'l 2
Ap'l 3	28380	W. E. D.	" 7
	24009	E. N. S.	" "

Date rec'd.	Car.		Date delivered.
1884.			
Ap'l 5	7026	B. L.	Ap'l 12
	332	"	" 10
	819	"	" 12
	4149	H. T. L.	" 10
	38371	N. Y. L.	" "
" 9	11133	C. S. L.	" 12
	14555	"	" "
" 10	23556	E. N. S.	" 16
" 11	24099	"	" 15
	609	B. L.	" 24
	3084	"	" 19
	3103	"	" 18
	2723	"	" 16
	419	"	" "
" 12	25750	C. E. S.	" "
	29943	N. Y. L.	" 18
" 16	28354	W. E. D.	" 21
" 17	11169	C. S. L.	May 20
248			
1884.			
Ap'l 17	11227	C. S. L.	May 20
	9047	"	Ap'l 30
	11147	"	" 22
	1771	M. D. T.	" 26
	431	"	" 24
" 18	11643	C. S. L.	" 30
	11249	"	May 5
	9003	"	Ap'l 30
	11625	"	" 25
	9112	"	" "
	11184	"	June 12
" 19	2040	B. L.	Ap'l 30
	1140	"	" "
" 23	1712	N. D. S.	July 16
" 25	2008	C. D. L.	May 4
	11233	"	" "
	4776	"	" 1
May 1	23625	E. N. S.	" 16
	3103	B. L.	" 7
	635	"	" 5
	364	"	" "
	4514	"	" "
	26859	E. & P. D.	" "

Date rec'd.	Car.		Date delivered.
1884.			
May 5	1348	B. L.	May 13
" 7	1123	"	" 21
	3086	"	" 16
	2367	"	" "
	1136	"	" 13
" 10	25152	E. N. S.	" 31
	24138	"	" 19
" 15	2026	C. S. L.	" "
	11306	"	June 25
	2202	M. D. T.	May 19
" 20	438	B. L.	June 2
	2272	"	May 31
	30309	N. Y. L.	June 2
	23945	E. N. L.	" 4
	4217	H. S. L.	" "
	4325	"	" 2
" 29	36781	N. Y. L.	" 12
	37144	"	" 14
1884.			
May 29	30559	N. Y. L.	June 7
	38390	"	" "
	28589	W. E. D.	" 9
June 12	30565	N. Y. L. E.	" 18
	30165	"	" "
	36827	"	" 19
	30293	"	" "
	30304	"	" 18
" 14	796	N. D. L.	" 24
	773	"	" 30
" 18	30413	N. Y. L.	" 24
	36742	"	" 23
	27763	"	July 12
	30017	"	" 11
	37042	"	June 24
" 21	9044	C. D. L.	" 30
	2887	M. D. F.	" 25
July 1	14596	C. S. L.	July 11
" 7	37016	N. Y. L.	" 26
	29901	"	" 23
	29539	"	" 21
" 9	29684	"	Aug. 2
" 12	1002	N. D.	Sep. 10
" 26	25128	E. N. S.	Aug. 2
Aug. 1	9018	C. S. L.	" 16

Date rec'd.	Car.		Date delivered.
1884.			
Aug. 5	11490	C. S. L.	Aug. 8
" 6	9038	"	Sept. 14
" 7	24067	E. N. S.	Aug. 22
	24696	S. S. L.	" 20
	14857	N. Y. L.	" 20
" 12	1768	N. J. L.	" 16
" 19	37974	N. Y. L.	" 29
	29321	"	" 20
	29834	"	" 29
	21154	"	Sept. 7
	27571	"	" 2
" 21	30364	"	Aug. 26
	4556	"	" "
	25341	E. N. S.	" 29
	24193	"	" 25
	25458	"	" 25
249			
1884.			
Aug. 21	21129	N. Y. L.	Aug. 20
" 27	36697	"	" 30
	27907	"	" "
	37039	"	" "
	36883	"	" 29
	22797	"	" "
" 28	15563	D. C.	Sep. 2
	29666	N. Y. S.	" "
	15368	"	" 4
	27898	"	Aug. 30
	27822	"	" "
" 30	15577	D. L.	
	15543	C. S. L.	
	4111	N. Y. L.	
	26092	E. P. D.	
	38670	N. Y. L.	
Sep. 1	27594	"	
	29898	"	
	21268	"	
	24148	E. N. S.	
	34129	"	
	6011	E. R. Y.	
" 8	38056	N. Y. L.	
" 10	37996	"	
	38287	"	

Date rec'd.	Car.		Date delivered.
1884.			
Sep. 10	25382	E. N. S.	
" 11	24764	S. S. L.	
	25128	E. N. S.	
	29816	N. Y. L.	
	38623	"	
" 13	36848	"	
" 14	4461	L. V.	
	37301	N. Y. L.	
" 20	4075	L. V.	
	23658	E. N. S.	
" 22	23727	E. M. L.	
	3231	L. V.	
	22453	C. E.	
	37065	N. Y. L.	
	38143	"	
	37421	"	
1884.			
Oct. 1	37372	N. Y. L.	Oct. 4
	28237	W. E. D.	" "
	37053	W. Y. L.	" "
	6140	E. Ky.	" 6
	28350	W. E. D.	" "
	28555	"	" 8
" 2	6249	E. Ky.	Nov. 12
	25492	E. N. S.	Oct. 9
	28203	N. Y. S.	7
	23392	E. N. S.	10
" 4	27561	N. Y. L.	28
	26436	E. P. D.	8
	25313	E. N. S.	"
" 6	22724	N. Y. L.	16
	21273	"	18
	25376	E. N. S.	Nov. 17
	29398	N. Y. L.	Oct. 8
	27019	"	" 8
" 7	37560	C. Ex.	" 11
" 13	11222	C. S. L.	" 22
" 23	9181	C. H. T.	Nov. 11
" 31	11312	C. S. L.	Dec. 9
	11159	"	Nov. 11
Nov. 11	37074	N. Y. L.	" 17
	29957	"	" "
	30461	"	" "
	25727	C. Ex.	" 22

Date rec'd.	Car.		Date delivered.
1884.			
Nov. 11	27781	N. Y. L.	Nov. 14
" 18	24982	S. S. C.	" 22
	27010	N. Y. L.	" "
	27502	"	" 24
" 20	36516	"	" 30
	4823	"	" "
" 21	11115	C. S. L.	Dec. 1
	11194	"	Nov. 27
" 22	34043	E. N. S.	Dec. 2
	25327	"	" 3
	31909	N. Y. L.	Nov. 30
	38283	"	" "
	37668	"	" 29
" 24	29811	"	Dec. 19
250			
1884.			
Nov. 26	29768	N. Y. L.	Dec. 2
" 27	23121	E. N. S.	" 12
	37266	N. Y. L.	" 10
Dec. 1	28425	W. E. D.	" 5
	23309	E. V. S.	" 9
	25372	"	" 5
	34185	"	" 6
	14523	C. S. L.	" 4
	23576	E. N. S.	" 4
	24198	"	" 4
" 3	1277	U. D. T.	" 9
" 6	28129	W. E. D.	" 12
	20650	"	" 12
	36476	C. Ex.	" "
" 10	25036	E. N. S.	" 13
	23200	"	" 29
	34149	"	" 19
" 13	20713	W. E. D.	" "
" 19	37014	N. Y. L.	" 28
" 20	34188	E. N. S.	" 26
	9032	C. S. L.	" "
	9007	"	" "
	11500	"	" 30
	27017	N. Y. L.	" "
" 26	25009	E. N. S.	Jan. 4
" 28	25002	"	" 10
	24036	"	" 7

Date rec'd.	Car.		Date delivered.
1884.			
Dec. 28	14717	Erie	Jan. 2
29	34163	E. W. S.	" 6
	11584	C. S. L.	" 2
	11304	"	Dec. 31
	29658	N. Y. L.	Jan'y 4
	30176	"	" 8
	24088	E. N. S.	" "
	3363	L. V.	" 3
	30532	N. Y. L.	" "
1885.			
Jan'y 2	2107	B. L.	" 8
	388	"	" "
	329	M. D. F.	" "
" 4	25911	E. P. D.	" "
	4537	N. Y. L.	" "
1885.			
Jan'y 4	11673	C. S. L.	Jan'y 7
	26949	C. P. D.	" 10
" 9	14555	C. S. L.	" 15
	14612	"	" 19
	36486	N. Y. L.	" "
	29644	"	" "
" 10	11204	C. S. L.	" "
	14992	N. Y. L.	" 15
	3225	L. V.	" "
	24676	S. S. L.	" 13
	11566	C. S. L.	" "
	11557	"	" "
" 15	14637	"	" 22
	2005	"	" "
	14632	"	" 23
" 17	2795	P. N. Y. C.	" 24
	34078	E. N. S.	" 21
" 19	14554	C. S. L.	" 23
" 22	22489	C. Ex.	" 21
	23824	E. M. L.	" 24
" 23	34163	E. N. S.	Feb'y. 2
" 27	8300	N. C.	" 7
	14650	C. S. L.	" "
" 29	11649	"	" "
" 31	37661	C. Ex.	" 13
	22982	E. N. S.	" "
	35661	S. S. L.	" 7
Feb. 6	37126	N. Y. L.	" 13

Date rec'd.	Car.		Date delivered.
1885.			
Feb. 6	27502	N. Y. L.	Feb'y 13
	29955	"	" "
	36688	"	" 14
	23713	E. M. L.	" 13
	3125	L. V.	M'ch 11
	28341	W. E. D.	Feb. 14
" 7	22975	E. W. S.	M'ch 4
	23750	E. M. L.	" "
	37421	N. Y. L.	" 14
	24347	E. W. S.	" 9
	28441	W. E. D.	" 5
	30380	N. Y. L.	" "
	36900	"	" "
251			
1885.			
Feb'y 19	11544	C. S. L.	M'ch 7
	11659	"	Feb. 20
	14514	"	" 21
" 26	25074	E. N. S.	M'ch 26
	25211	"	Ap'l 3
	25798	C. Ex.	M'ch 23
	37172	N. Y. L.	" 5
M'ch 5	6293	B. L.	" 9
" 11	29663	N. Y. L.	" 14
	37647	C. Ex.	" 16
	30113	N. Y. L.	" 14
	3309	L. V.	" "
" 18	24165	L. V. I.	" 21
	4971	L. V.	" "
	24578	W. E. D.	" 27
	28570	"	Ap'l 2
" 20	11203	C. S. L.	M'ch 27
	14586	"	" 25
	14700	"	" "
	11306	"	" "
" 24	37557	C. Ex.	" 30
	28517	W. E. D.	" "
	22999	E. N. S.	" 31
	37942	N. Y. L.	Ap'l 1
" 25	22954	E. N. S.	M'ch 30
	38357	N. Y. L.	Ap'l 6
	22717	"	" 1
" 27	27122	E. M. L.	" 7

Date rec'd.	Car.		Date delivered.
1885.			
M'ch 27	22294	C. Ex.	M'ch 30
Ap'l 2	37699	"	May 1
	34193	"	Ap'l 21
	36966	N. Y. L.	" 16
	25241	E. N. S.	" 4
	28527	W. E. D.	" 7
" 7	37647	C. Ex.	" 11
	6565	E. & P. D.	" 10
	24227	E. N. S.	" 11
	23611	"	" 13
	24838	S. S. L.	" 14
	22268	C. Ex.	" 15
	25376	L. N. S.	" 20
1885.			
Ap'l 7	23865	L. M. L.	Ap'l 11
" 8	38776	N. Y. L.	" 15
" 9	23102	E. N. S.	" 14
	25198	"	" "
" 13	14549	C. S. L.	" 18
	24063	E. N. S.	" 16
	23557	"	" 16
" 17	3124	L. V.	" 22
	26475	E. & P. D.	" "
	23460	W. E. D.	" 29
	23711	E. N. L.	" 23
	37164	N. Y. L.	" 24
	39376	"	" 23
" 18	14696	C. S. L.	" 28
	14720	"	May 9
" 23	29768	N. Y. L.	Ap'l 23
	23532	E. N. S.	May 6
	4439	N. Y. L.	" "
	36776	"	" 8
	25217	E. N. S.	" "
	28538	W. E. D.	" 2
	27026	N. Y. L.	" 1
	489	M. D. T.	" 1
	4535	L. V.	" 1
	24105	E. N. S.	" 1
" 28	24241	"	" 2
	27112	E. M. L.	" "
	24227	E. N. S.	" 6
" 29	25160	"	" 3
	28498	W. E. D.	" 2

Date rec'd.	Car.		Date delivered.
1885.			
Ap'l 29	947	B., H. & To. W.	May 2
May 2	28405	W. E. D.	" 7
	25323	E. N. S.	" "
	22150	C. Ex.	" "
	22700	N. Y. L.	" 8
	24280	E. N. S.	" 7
	28449	W. E. D.	" 9
" 5	37697	C. Ex.	" 8
	28134	W. E. D.	" 9
	6180	E. R'y	" "
	14184	E. N. S.	" 12
252			
1885.			
May 5	28426	W. E. D.	June 25
	34057	E. N. S.	" 10
	25376	"	May 12
	21112	N. Y. L.	" 9
	37591	C. Ex.	" 15
" 7	23779	E. M. L.	" 16
	23606	E. N. S.	" 15
	20792	W. E. D.	" 13
" 12	24013	E. N. S.	" 15
	28219	W. E. D.	" "
	20759	"	" 18
	29458	N. Y. L.	" 21
	25283	E. N. S.	" 19
	23644	"	" 20
" 14	23460	"	" 26
	37528	C. Ex.	" 22
" 15	3427	N. D.	" 26
" 16	24105	E. N. S.	" 21
	28011	S. S. L.	" 20
	30023	N. Y. L.	" "
	28274	W. E. D.	" "
	28233	"	" 21
	22822	E. M. L.	" 22
" 15	27815	N. Y. L.	" 23
	34107	E. N. S.	" 22
	22163	C. Ex.	June 3
" 19	6282	B. L.	May 25
	6307	"	" 23
	356	"	" 22
	403	"	" 21

Date rec'd.	Car.		Date delivered.
1885.			
May 19	23068	E. N. S.	May 23
" 21	25970	E. & P. D.	" 26
	24241	E. N. S.	" "
	23474	"	" 29
	29341	N. Y. L.	" 28
" 25	3098	S. S. L.	June 1
	25392	E. N. S.	" 1
	4535	B. L.	May 29
" 26	25511	C. Ex.	" 30
	28256	W. E. D.	" "
" 27	24174	E. N. S.	June 2
1885.			
May 27	38231	N. Y. L.	June 1
	23277	E. N. S.	May 30
" 28	22366	C. Ex.	June 8
	2039	C. S. L.	" 12
	22120	C. Ex.	" 6
	25564	"	" 6
June 1	25121	E. N. S.	" 9
	37582	C. Ex.	" "
	23988	E. M. L.	" 6
	28255	W. E. D.	" "
" 2	23580	E. N. S.	" "
	23167	"	" 9
" 3	5189	L. W.	" 8
	37667	C. Ex.	" 12
	22365	"	" 9
	37339	N. Y. L.	" "
	2009	C. S. L.	" 8
	2656	B. C.	" 6
	896	"	" 5
" 4	25498	E. N. S.	" 8
	24280	"	" 10
	23968	E. M. L.	" 8
	24300	E. N. S.	" 9
	22813	E. M. L.	" 26
" 5	372	B. L.	" 9
" 8	2473	"	" 19
	1159	"	" "
	820	"	" 10
	29458	N. Y. L.	" 11
	2187	B. L.	" 12
	626	"	" 13
" 9	23301	E. N. S.	" 12

Date rec'd.	Car.		Date delivered.
1885.			
June 9	23256	E. N. S.	June 15
	22989	"	" 20
	24340	"	" 13
	25064	"	" "
" 10	1234	I. W. D.	" 18
	23169	E. N. S.	" 12
	22962	"	" 16
	23349	"	" 13
	23279	"	" "
253			
1885.			
June 10	23329	E. N. S.	June 15
	23347	"	" 26
	23330	"	July 6
" 12	21269	N. Y. L.	June 16
	30339	"	" "
	25215	E. N. S.	" 20
	4349	"	" 25
	29813	N. Y. L.	" 30
	27850	"	July 2
" 13	4500	B. L.	June 18
" 15	14638	C. S. L.	" 25
" 19	28148	W. E. D.	" 26
	28577	"	" "
	28190	"	" "
	23656	E. N. S.	" 25
	23253	"	" "
" 20	36537	N. Y. L.	" 26
	28596	W. E. D.	" "
	25300	E. N. S.	" "
	24200	"	" 25
	4566	N. Y. L.	" 30
	4623	"	" "
" 26	2013	C. S. L.	July 1
	14597	"	" "
	34057	E. N. S.	Aug. 31
	434	B. L.	July 6
	631	"	June 30
	6214	"	" "
" 28	25534	C. Ex.	July 1
	28442	W. E. D.	" 1
	28316	"	" 1
	24313	E. N. S.	" 1

Date rec'd.	Car.		Date delivered.
1885.			
June 28	15156	N. C.	July 2
	29202	N. Y. L.	" 1
" 29	24082	E. N. S.	" 2
	28217	W. E. D.	" 2
	23797	C. Ex.	" 2
	25290	E. N. S.	" 3
" 30	9106	C. S. L.	" 6
	11168	"	" 6
	14536	"	" 6
1885.			
June 30	14753	C. S. L.	July 6
	2343	B. L.	" 10
	1028	"	" 15
July 1	11566	C. S. L.	" 9
	2074	"	" 9
" 3	23300	E. N. S.	" 9
	23186	"	" 8
	23083	"	" 8
	23196	"	" "
" 5	37814	N. Y. L.	" "
" 7	26852	E. & P. D.	" 11
	22219	C. Ex.	" 13
	25409	E. N. S.	" 11
	24214	"	" "
	37170	N. Y. L.	" "
	27815	"	" 15
	24329	E. N. S.	" 11
	24496	N. Y. L.	" "
	14455	"	" "
" 8	24307	E. N. S.	" "
	24008	"	" "
	23479	"	" "
	25792	C. Ex.	" 14
	20783	W. E. D.	" 15
	24131	E. N. S.	" 11
	23475	"	" "
	25309	"	" "
	28418	W. E. D.	" "
" 9	36862	N. Y. L.	" 14
	28406	W. E. D.	" "
	37374	N. Y. L.	" 13
	38317	"	" "
	27083	"	" 14
" 11	23562	E. N. S.	" 16

Date rec'd.	Car.		Date delivered.
1885.			
July 11	25222	E. N. S.	July 20
	36867	N. Y. L.	" 23
	37433	"	" 28
	25099	E. N. S.	" 16
	25660	C. Ex.	" "
" 13	29903	N. Y. L.	" "
	36539	"	" "
254			
1885.			
July 13	37339	N. Y. L.	July 21
	25547	C. Ex.	" 1
	30216	N. Y. L.	" 16
	29876	"	" 18
	14704	C. S. L.	" 17
	14593	"	" "
	14787	"	" "
" 14	28383	W. E. D.	" 22
	36555	N. Y. L.	" "
	29947	E. & D.	" 22
	26997	"	" 17
	34015	E. N. S.	" 18
	23803	E. M. L.	" 28
	37356	N. Y. L.	" 18
	27526	"	" "
" 15	25558	C. Ex.	" 22
	27963	N. Y. L.	" "
" 16	37337	"	" 20
	23031	E. N. S.	" 28
" 17	34047	"	" 23
	28543	W. E. D.	" "
	28306	"	" 28
	36934	N. Y. L.	" 22
" 20	34186	E. N. S.	Aug. 1
	30400	N. Y. L.	July 28
	23765	E. & M. L.	Aug. 1
	27063	N. Y. L.	" 1
	29569	"	July 28
	37679	C. Ex.	" "
	23490	E. N. S.	" "
" 21	37623	C. Ex.	Aug. 3
	25652	"	July 28
" 22	1021	M. D. F.	" 30
	34150	E. N. S.	" 24

Date rec'd.	Car.		Date delivered.
1885.			
July 22	37524	C. Ex.	Aug. 4
	6094	E. Ky.	" "
	6054	"	July 28
	36819	N. Y. L.	Aug. 3
" 23	27532	"	July 30
	27516	"	" "
	23549	E. N. S.	" "
1885.			
July 27	24247	E. N. S.	July 31
	29318	N. Y. L.	" "
" 28	23524	W. E. D.	Aug. 4
	22257	C. Ex.	" "
	6096	E. Ky.	" "
	37042	N. Y. L.	" "
	27133	E. M. L.	" "
" 29	23956	"	" 1
	23760	"	" 10
	37052	N. Y. L.	" 10
	37458	"	" 6
" 30	27010	"	" "
	25073	"	" 4
	37990	"	" 6
	37892	"	" 6
" 31	29412	"	" 6
	29796	"	" 6
Aug. 1	27860	"	" 7
	30144	"	" 10
	29766	"	" "
" 4	30409	"	" 11
	30230	"	" 10
	25088	E. N. S.	" "
	23977	E. M. L.	" "
	36711	N. Y. L.	" 12
	25277	E. N. S.	" "
" 5	36608	N. Y. L.	" 10
	4632	"	" "
	29557	"	" 13
	29804	"	" "
" 6	30074	"	" 17
	25001	E. N. S.	" 12
	27995	N. Y. L.	" "
	25169	E. N. S.	" 10
" 7	25630	C. Ex.	" 13
	30560	N. Y. L.	" "

Date rec'd.	Car.		Date delivered.
1885.			
Aug. 10	23507	E. N. S.	Aug. 14
	27043	N. Y. L.	" "
	23638	E. N. S.	" "
	4879	N. Y. S.	" "
	29402	"	" 15
255			
1885.			
Aug. 10	25321	E. N. S.	Aug. 14
	24136	"	" "
	27158	E. M. L.	" 18
	22484	C. Ex.	" "
" 11	23170	E. N. S.	" 17
	15557	D. L.	" "
	30457	N. Y. L.	" 15
" 12	25442	E. N. S.	" 19
	23802	E. M. L.	" 18
	23460	E. N. S.	" "
" 13	28257	W. E. D.	" 19
	23859	E. M. L.	" 17
	27827	N. Y. L.	" "
	23605	E. N. S.	" 18
	29420	N. Y. L.	" 19
" 14	23969	E. N. S.	" 19
	23153	E. N. S.	" "
	23260	"	" 28
	28584	W. & E. D.	" 19
	14621	N. Y. L.	" 20
	29943	"	" "
	6143	E. Ky.	" 21
" 17	36696	N. Y. L.	" "
	36540	"	" "
	15237	"	" 22
" 18	38262	"	" 24
	36472	"	" "
	37698	C. Ex.	" "
	37118	N. Y. L.	" "
	23442	E. N. S.	" "
" 19	23430	"	" "
	29728	N. Y. L.	" "
	25356	E. N. S.	" 25
	25428	"	" 27
	21375	N. Y. L.	Sept. 1
	23209	E. N. S.	Aug. 24

Date rec'd.	Car.		Date delivered.
1885.			
Aug. 19	2440	E. N. S.	Aug. 24
	23401	"	" "
	27993	N. Y. L.	" "
	26864	E. P. D.	" 25
" 20	23959	E. M. L.	" 28
1885.			
Aug. 20	23372	E. N. S.	Aug. 29
" 21	23136	"	Sep. 12
	23462	"	" "
	483	N. D. T.	" 9
	1332	"	" 8
	28570	W. E. D.	Aug. 26
" 24	23084	E. N. S.	" 27
	25628	C. Ex.	" 29
	23390	W. E. D.	" 29
	28402	N. Y. L.	" 29
	25728	C. Ex.	" 27
" 25	23496	E. N. S.	" 28
	23981	E. M. L.	" "
	23614	E. N. S.	" "
	27960	N. Y. L.	" 29
	25214	E. N. S.	" "
	23513	"	Sept. 1
" 26	27115	E. M. L.	" 3
	24785	S. S. L.	" 2
	22359	C. Ex.	" 3
	6276	E. Ky.	" 1
" 27	23966	E. M. L.	" 3
	30263	N. Y. L.	" 1
" 28	23792	E. M. L.	" 4
	24163	E. N. S.	" "
	25221	W. E. S.	" "
	37578	C. Ex.	" 3
	37369	N. Y. L.	" 2
" 29	6095	E. Ky.	" 7
	22112	C. Ex.	" 3
	28534	W. E. D.	" "
	23084	E. N. S.	" 4
	14651	N. Y. L.	" "
Sep. 1	6011	E. Ky.	" 15
	36453	N. Y. L.	" 14
	29358	"	" 9
	27030	"	" 7
	37487	"	" 4

Date rec'd.	Car.		Date delivered.
1885.			
Sep. 1	3076	L. V.	Sept. 4
" 3	23479	E. N. S.	" 7
	38576	N. Y. L.	" 9
256			
1885.			
Sept. 3	28213	W. E. D.	Sept. 7
" 4	24181	E. N. D.	" "
	25350	"	" 10
	22975	"	" 9
" 5	25410	"	" 18
	23337	"	" "
	29566	N. Y. L.	" "
	25238	E. N. S.	" 12
	24344	"	" 9
" 7	29658	N. Y. L.	" 23
	36469	"	" "
	25445	E. N. S.	" 14
	25281	"	" 18
	28516	W. E. D.	" 17
	6307	B. L.	" 12
	310	"	" 17
" 8	23412	E. N. S.	" 22
	25141	"	" 19
	25084	"	" 14
	22345	C. Ex.	" "
" 12	23530	E. N. S.	" 17
" 17	37694	C. Ex.	" 25
"	29663	N. Y. L.	" "
	11224	C. S. L.	" 23
" 18	6236	B. L.	" 23
" 21	35040	E. N. S.	" 25
	22326	C. Ex.	" 26
	25055	E. N. S.	" 24
	22057	C. Ex.	" "
	30514	N. Y. L.	" 28
	23053	E. N. S.	Oct. 2
	28368	W. E. D.	Sept. 30
	25024	E. N. S.	Oct. 1
" 25	11539	C. S. L.	Sept. 30
" 26	9105	"	" "
	1300	M. D. F.	" "
" 28	36878	N. Y. L.	Oct. 1
	23582	E. W. S.	" "

Date rec'd.	Car.		Date delivered.
1885.			
Sept. 28	25440	E. W. S.	Oct. 1
	24332	"	" "
	25594	C. Ex.	" "
1885.			
Sept. 28	36510	N. Y. L.	Oct. 2
" 30	25292	E. N. S.	" 10
	2601	L. V.	" 7
	22994	E. N. S.	" "
	20690	W. E. D.	" 3
	1076	P. K.	" 5
	709	M. D. F.	" 2
	1278	"	" 9
	876	B. L.	" 7
Oct. 3	27863	N. Y. L.	" 7
	25229	E. N. S.	" 7
	7531	N. C.	" 7
" 5	27999	N. Y. L.	" 10
	1263	U. S. F.	" 21
	3211	L. V.	" 10
	11528	C. S. L.	" 8
" 6	14551	"	" "
" 7	38169	E. & P. D.	" 13
" 8	3839	L. V.	" 12
" 9	25362	E. N. S.	" 14
" 12	30240	N. Y. L.	" 15
	664	B. H. T. W.	" 15
	21090	N. Y. L.	" 16
	15985	"	" 15
	26279	E. & P. D.	" "
	25670	C. Ex.	" "
	26778	E. P. D.	" "
	20649	W. E. D.	" "
	15559	S. L.	" "
" 13	479	B. L.	" 22
	28277	W. E. D.	" 20
" 14	24235	E. N. S.	" "
	6094	E. Ky.	" 16
	23654	E. N. S.	" 28
	26165	E. & P. D.	" 26
	20605	W. E. D.	" 17
	28463	"	" 16
	28442	"	" 23
	23887	E. W. L.	" 20
	27136	"	" 16

Date rec'd.	Car.		Date delivered.
1885.			
Oct. 17	24162	E. N. S.	Oct. 26
257			
1885.			
Oct. 17	24000	E. N. S.	Oct. 22
" 19	28575	W. E. D.	" 27
	20729	"	" 26
	22388	C. Ex.	" 23
	26650	E. P. D.	" "
	22287	C. Ex.	" 22
	27881	N. Y. L.	" "
	37563	C. Ex.	" 26
	23544	E. N. S.	" 22
	23955	E. M. L.	" "
	28375	W. E. D.	" 26
	14153	N. Y. L.	" 27
	37653	C. Ex.	Nov. 2
" 20	394	B. L.	Oct. 23
	32628	C. R. R. of N. Y.	Oct. 26
	27969	N. Y. L.	" 24
	28427	W. E. D.	" 26
	4399	L. V.	" 24
" 21	6105	E. Ky.	" 26
" 22	29520	N. Y. L.	" 27
	3210	L. V.	" 30
	25788	C. Ex.	" 28
	20713	W. E. D.	" 31
" 23	3793	L. V.	" 30
	22177	C. Ex.	" 27
" 26	35202	E. M. S.	" 31
	28280	W. E. D.	" 30
" 27	38320	N. Y. L.	Nov. 30
	25357	E. N. S.	Oct. 29
	20673	W. E. D.	" 30
	20780	"	" 31
	37347	N. Y. L.	" "
" 30	11496	C. S. L.	Nov. 7
" 31	2639	L. V.	" 4
	28109	W. E. D.	" 4
	14792	C. S. L.	" 5
Nov. 3	23487	E. N. S.	" 22
	25489	"	" "
	25312	"	" 5
	34146	"	" 10

Date rec'd.	Car.		Date delivered.
1885.			
Nov. 4	23490	E. N. S.	Nov. 7
1885.			
Nov. 7	11664	C. S. L.	Nov. 19
" 9	4165	N. Y. L.	" 22
	4169	Erie	" 19
	36604	N. Y. L.	" "
" 12	35729	C. Ex.	Dec. 15
	15557	D. L.	" 10
	30394	N. Y. L.	Nov. 22
	23561	E. D.	Dec. 9
" 19	1016	B. L.	Nov. 22
	2149	"	" "
	1525	C. S. L.	" 25
	23151	E. N. S.	" 28
	36515	C. Ex.	" 25
" 24	28548	W. E. D.	Dec. 5
" 25	14554	C. S. L.	" 2
" 26	622	B. L.	Nov. 28
	840	"	" 30
" 27	23954	E. M. L.	Dec. 10
" 28	14585	C. S. L.	" 4
Dec. 2	2617	B. L.	" "
	6265	"	" 5
" 4	37629	C. Ex.	" 23
	20777	W. E. D.	" 22
	9022	C. S. L.	" 11
	11619	"	" 14
" 15	1281	M. D. T.	" 16
" 16	439	B. L.	" 21
	461	"	" 18
	7292	I. V. L.	" 19
	22470	C. Ex.	" 28
" 18	400	M. D. T.	" 23
" 19	2580	"	Jan'y 8
	452	B. L.	" 18
	2243	"	Dec. 28
	819	"	Jan'y 25
	455	"	" 8
" 21	1047	M. D. F.	Dec. 22
	2536	B. L.	" "
" 22	434	"	" 26
	809	"	" 23
" 23	7272	S. V. L.	" 26

Date rec'd.	Car.		Date delivered.
258			
1885.			
Dec. 24	637	B. L.	Jan'y 18
	235	"	" 15
	2253	M. D. T.	Feb'y 5
" 28	1484	"	Jan'y 30
	602	B. L.	" 25
" 29	3014	M. D. F.	" 7
	1176	B. L.	" 5
1886.			
Jan'y 22	496	"	
	475	M. D. F.	" 28
" 23	815	B. L.	" 29
" 30	1112	"	M'eh 2
	2950	M. D. F.	Feb'y 22
Feb'y 1	4140	E. D.	" 8
	36816	N. Y. L.	" 12
" 4	38566	E. D.	" 8
" 6	26996	N. Y. L.	" 10
	22686	E. D.	" 10
	25637	C. Ex.	" "
	22027	E. D.	" "
	24704	"	" 20
	25146	E. N. S.	" 10
" 8	22063	C. Ex.	" 26
	1273	M. D. F.	" 10
	4681	N. Y. L.	" 18
" 9	499	B. L.	" 23
	22588	E. D.	
" 10	349	B. L.	" 19
	5012	L. V.	" 17
" 11	14729	C. S. L.	" "
	14761	"	" 18
	2571	M. D. F.	" 25
	11301	C. S. L.	" 16
	14624	"	" "
	14750	"	M'ch 6
	14573	"	Feb'y 19
	2010	"	" "
" 18	23136	E. N. S.	" 27
" 19	22176	E. D.	M'ch 2
	37262	N. Y. L.	" "
	14735	C. S. L.	
	14641	"	Feb'y 26

Date rec'd.	Car.		Date delivered.
1886.			
Feb'y 19	11483	C. S. L.	
" 20	376	B. L.	
	2028	C. S. L.	M'ch 8
	14659	"	M'ch 4
	22049	E. D.	M'ch 2
	24387	"	" 8
	22653	"	Feb. 25
	23563	"	" "
" 25	24704	"	M'ch 2
	25146	"	
	25281	"	
	29535	"	
	30445	"	
	35343	"	
" 27	30098	N. Y. L.	
	25234	E. N. S.	M'ch 4
	37415	N. Y. L.	" 4
	28121	W. E. D.	" 4
M'ch 2	28203	"	" 8
	25032	E. N. S.	" 8
	22686	E. D.	
	25572	C. Ex.	M'ch 6
	30435	N. Y. L.	
" 4	29782	"	
	37131	"	
	2896	"	M'ch 8
	27711	S. S. L.	
	22278	C. Ex.	
" 6	24815	E. D.	
	24821	"	M'ch 8
	38311	"	M'ch 8
" 7	22486	C. Ex.	
	28502	W. E. D.	

Total number of cars, 1,222.

259 Toledo, Cincinnati & St. Louis R. R.

A Statement by the Receiver.

(Here follows map marked p. 259.)

260 Toledo, Cincinnati & St. Louis railroad.

Mileage of Divisions.

Toledo Division: Toledo, Ohio, to Kokomo, Indiana	181.3	miles.
St. Louis Division: Kokomo, Ind., to East St. Louis, Ill.	268.4	"
Dayton Division: Delphos, Ohio, to Dayton, Ohio	98.7	"
Dayton and S. E. Division: Dayton, Ohio, to Dean, Ohio	165.1	"
Cincinnati Division: Lebanon Junction, O., to Dodds, O.	16.8	"
Iron R. R. Division: Dean, Ohio, to Ironton, Ohio	12.0	"
Cincinnati Northern R'y Division: Dodds, Ohio, to Cincinnati, Ohio	41.2	"
Total	783.5	miles.

The Toledo, Cincinnati & St. Louis R. R.

Here is a railroad of three feet gauge that was 833 miles in extent and mortgaged for more than nineteen millions of dollars.

Upon it was equipment which was mortgaged for two millions more.

And it failed for a million more.

The story of how this all came about has never been told. Those who did not know could not tell. Those who did know some of the causes were too much discouraged to go into details and ended the catechism by casting the whole blame upon "the other fellow."

By reason of habitual poverty and the logic of events the property developed a failure in the hands of the corporation, and on the 1st of August, 1883, Mr. E. E. Dwight was put in charge as receiver. Subsequent legal complications resulted in the appointment of W. J. Craig, on Nov. 1, 1883, as receiver of each of the several mortgaged divisions situated south of Delphos, Ohio, Mr. Dwight remaining receiver of the main line, from Toledo to St. Louis. On the 1st day of December, 1883, Mr. Dwight resigned and the writer was appointed receiver of the main line and thereupon took charge of the entire property.

The court ordered a sale of the several divisions south of Delphos, to take place on the 28th of June, 1884, and appointed ex-Gov. J. D. Cox, of Cincinnati, Ohio, as a special master to ascertain and report the receiver's indebtedness and how the same should be distributed among the several divisions, together with proper charges for repair and use of equipment, as well as other things necessary to the knowledge of the court, before making and confirming sale. The master filed a report devoted more especially to the southern divisions, but covering the entire system in matters of indebtedness, car rentals and repairs, and other things of like import. The
261 sales took place on the date named, and, with the exception

of the Cincinnati Northern, the divisions sold were delivered to the purchasers of each on or about July 22, 1884. Briefly, Mr. Dwight was receiver of the entire road from Aug. 1 to Nov. 1, 1883, and of the Toledo and St. Louis Divisions alone from Nov. 1 to Dec. 1, 1883. Mr. Craig was receiver of the southern divisions from Nov. 1 to Dec. 1, 1883; receiver of the entire road from Dec. 1, 1883, to July 22, 1884, and of the Toledo and St. Louis Divisions alone from the last date to the present time.

The following papers are prepared for a double purpose, namely:

1. Very frequent applications have been made for information concerning this railroad from the inception of the enterprise to the present time, its physical and financial condition, its operations before as well as since the appointment of a receiver, and the probabilities of its future. It is deemed proper, therefore, to present some data which may be a convenient reference in those matters and afford a basis for the future development of the property, as well as to furnish to the court information which may possibly assist it in its control, operation, and final disposition of the road.

2. Since the filing of the master's report, last June, in which the receiver's debt is shown to be about a million dollars, the opinion has prevailed that the present incumbent has actually involved the road in debt to that amount. Very severe criticisms have been indulged in by the press and public, of Boston especially, and it may be not at all surprising that they should, in the absence of fuller information, jump to the conclusion that the present management is criminally careless and reckless or grossly incompetent. If, therefore, an analysis of the figures contained in the master's report shall, to even a partial extent, vindicate the writer against such conclusions, the second and to him most important point will have been gained.

Toledo, January, 1885.

Analysis of Receiver's Debt.

On page 16 of the printed report the master places the receiver's liabilities, rentals, etc., at $981,189.64, and itemizes it as follows:

The master finds the total liabilities of the receiver on vouchers payable, etc., to be, 1st day of April, 1884	$336,180 60
Due to Iron railroad, being excess of earnings over expenses on that line	33,716 37
Receiver's certificates issued	181,618 09
Rentals upon rolling stock during the receivership, as is hereinafter more fully reported upon (to July 1st)	403,997 00
Probable deficit in receiver's income for April, May, and June	100,000 00
Total amount of liabilities of the receivership on July 1st, 1884	$1,055,512 06
Estimated value of assets	74,322 42
Excess of liabilities over assets July 1st	$981,189 64

The opinion is prevalent that this amount of indebtedness has been made by the present receiver. While the correctness of the master's figures are admitted as showing the indebtedness which was at the time of the report a lien upon the property, an analysis of those figures ought to a considerable extent relieve this receiver from the responsibility of the debt.

In the indebtedness named he has figured car rentals at $403,997.00. The Toledo, Cincinnati & St. Louis railroad or any portion of it was never able to pay its car rentals. Interest on the equipment bonds as the coupons became due was invariably paid out of construction funds or out of funds (other than the earnings) in
262 the hands of the Eastern managers of the road. The fact that all former managers defaulted in the payment of equipment interest is of itself no valid reason why the receiver should do so, but it furnishes very fair grounds for the proposition that he can hardly be expected to do that which none of his predecessors have been able to do, among whom are included several gentlemen of more than ordinary reputation as railroad managers.

There is also included $113,941.89 of what are commonly known as Frankfort & State Line certificates. These certificates were issued by order of the court to secure contractors who built the Frankfort & State Line road and did other work on the St. Louis Division in 1881 and 1882, long before this receivership, which is by no means a receiver's debt. It was a debt of the corporation evidenced by promissory notes, and it became necessary to issue the certificates in order to preserve the property. The Frankfort & State Line road, which extends from Frankfort, Indiana, to the Illinois State line, has not yet been consolidated with the T., C. & St. L. R. R., nor is it covered by its mortgage, although a portion of the St. Louis Division. Eighteen-twentieths of its capital stock was pledged as collateral security for the payment of the notes above mentioned, which capital stock was held by the American Loan & Trust Co. of Boston under a trust agreement between the corporation and its creditors. Those construction debts were never paid by the company, and in order to preserve the St. Louis Division intact the court directed that receiver's certificates should be issued for the payments above named, the Frankfort & State Line stock to be surrendered by the American Loan & Trust Co. and placed in the hands of the receiver until further orders of the court.

There is also included in said indebtedness a certificate amounting to $25,176.20, which was issued in settlement of the Seasongood right-of-way claim in the city of Cincinnati. It was purely a debt of the Cincinnati Northern railway made before its consolidation with the T., C. & St. L. It is a matter in which no other portion of the road is interested, and was so settled at the instance of security holders of that division.

Included in the aggregate indebtedness also is an item of $42,500, receiver's certificates, issued in purchase of a thousand tons of 56-pound steel rail with proper fastenings, freights from the rolling mill, and like charges. This item should not be charged as an operating expense nor as an indebtedness made by the receiver. It

is a debt made by the fact that a portion of the road was absolutely worn out when this receivership began.

Before closing this writing occasion may be taken to say something in relation to the physical condition of the road, and particularly of the rail originally laid, and thereupon the correctness of this position will be more apparent. Whoever pays this debt will receive a specific equivalent.

The amount of the above-mentioned certificates and car rentals subtracted from the total indebtedness leaves a remainder of $395,574.55 unexplained. Table "A" shows the actual amount of the balances due from the several divisions on April 1, 1884, amounting to $295,574.55, to which was added estimated deficit of $100,000 for the months of April, May, and June, 1884, and which was also apportioned among the several divisions.

TABLE A.

Receiver's Debt, July 1, 1884, *as Reported by Hon. J. D. Cox, Special Master, Estimating Deficit for Months of April, May, and June,* 1884, *as* $100,000.00.

Total amount due on vouchers, pay-rolls, &c.	$336,180 60	
Surplus due Iron R. R.	33,716 37	
Estimated deficit, three months	100,000 00	
	469,896 97	
Less assets, per ledger	74,322 42	
		$395,574 55

Due from following sources:

263

		Estimated deficit.	
Toledo Terminal, Nov. 1 to April 1st	$3,259 79	$1,580 00	$4,839 79
" Division, " " "	62,085 04	30,050 00	92,135 04
St. Louis " " "	61,682 50	29,850 00	91,532 50
Dayton " " "	15,222 60	7,360 00	22,582 60
D. & S. E. " " "	38,633 79	18,700 00	57,333 79
Cin'ti " " "	4,652 02	2,250 00	6,902 02
C. N. R'y " " "	21,098 18	10,210 00	31,308 18
" " Aug. 1st to Nov. 1, '83	3,355 05	----------	3,355 05
All divisions except Iron and C. N. R'y to Nov. 1, 1883	26,583 21	----------	26,583 21
Corporation debts paid from earnings	58,915 62	----------	58,915 62
Toledo Terminal trust	86 75	----------	86 75
	$295,574 55	$100,000 00	$395,574 55

TABLE B.

Receiver's Debt, July 1st, 1884, per Auditor's Books.

Total amount due on vouchers, pay-rolls, &c.	$395,747 00	
Surplus due Iron R. R.	40,819 79	
	436,566 79	
Less assets, per ledger	78,753 16	
		$357,813 63
Due from following sources:		
Toledo Terminal	$6,130 00	
" Division	67,317 31	
St. Louis "	91,566 09	
Dayton "	18,169 27	
D. & S. E. "	52,071 94	
Cin'ti "	6,621 91	
C. N. R'y "	29,069 41	
All divisions except Iron and C. N. R'y	26,583 21	
Corporation debts paid, &c.	58,867 31	
Toledo Terminal trust	1,417 18	
		$357,813 63

TABLE C.

Receiver's Debt, November 1st, 1884, per Auditor's Books.

Total amount due on vouchers, pay-rolls, &c.	$399,835 76	
Surplus due Iron R. R.	41,133 91	
	440,969 67	
Less assets, per ledger	59,129 68	
		$381,839 99
Due from following sources:		
Toledo Terminal	$8,512 52	
Toledo Division	57,116 97	
St. Louis "	117,159 92	
Dayton "	20,544 11	
D. & S. E. "	56,791 30	
Cin'ti "	6,582 94	
C. N. R'y "	28,429 76	
All divisions except Iron and C. N. R'y to Nov. 1, 1883	26,583 21	
Corporation debts	58,702 08	
Toledo Terminal trust	1,417 18	
		$381,839 99

In tables "B" and "C" the above-mentioned receiver's certificates and car rentals are not included in receiver's debt of July 1st or November 1st.

From the foregoing tables it will be observed that the master's estimate of probable deficit for April, May, and June was too large by $37,760.92.

Particular attention is directed to table "C," which shows that the receiver's debt on the first day of November, 1884, is $13,754.56 less than the master reported it would be on the first day of July, 1884. This shows a deficit of $6,001.59 per month.

It is not admitted, however, that the deficit shown in the foregoing tables are losses in operating, because the receiver's debt would have been very much less had he not been compelled to divert large sums of money to the payment of extraordinary expenses incident to the operation and preservation of a property complicated as is this one.

The receiver's debt as shown by table C, to wit, $381,839.99, is chargeable as follows:

Receiver Dwight	$119,656 40
Receiver Craig	262,183 59

264 It is deemed proper here to offer an explanation of some items which are charged against the present receiver.

Reference has been made to a large block of Frankfort & State Line Railroad Company stock which was held in trust by the American Loan & Trust Company. A fee of $726.68 was charged by said trust company for acting as trustee in the matter, which amount the receiver was directed to pay. The amount was paid out of the earnings of the road, although the transaction had nothing whatever to do with the operating department.

Before the road went into the hands of a receiver there was an endeavor to build a branch from near the city limits of Toledo to a point on the Maumee river where a dock was being constructed for the use of the company. Lot number seven (7) had been purchased from Thomas Noonan and lot eight (8) from John Halpin, both lots being necessary for the right of way to the dock mentioned. A considerable portion of the purchase-money was paid to Noonan and Halpin prior to August 1st, 1883. In order to secure the property and not lose what had already been paid the receiver was authorized to pay the remainder of the purchase-money, to wit, $1,330.43. This proposed extension and dock property is all held in trust outside of the mortgages, and the receiver is entitled to be reimbursed from whatever funds may hereafter be applicable to the completion of that property.

On the 3rd of November, 1883, three days after the present receiver came into possession, the round-house and repair shops at Dayton burned to the ground, together with all the tools and other contents, including six locomotives. There was no insurance on the building and tools, and the receiver was compelled to rebuild at a cost of $6,201.88, besides replacing the machinery and tools, which cost $2,724.93. It will hardly be contended that it is the receiver's province to provide round-houses and machine shops out of the earnings, but, in case a contrary view is taken, it certainly ought to

be regarded as an extraordinary expense. It might have been guarded against by insurance upon the property. That fire brought with it further extraordinary expenses of fully $5,000 for repairs to locomotives, which otherwise would have been unnecessary. All such property is now kept insured.

Upon the same principle that the purchase of the one thousand tons of steel rail was an extraordinary expense it may be claimed that the cost of laying, say $4,000, is of the same nature.

There was upon the road a steam excavator which had been partially paid for, leaving a balance due upon the same of $3,500. In order to save this tool the receiver was instructed by the court to pay the remainder. It has not done a moment's work for the receiver, but will be used to excellent advantage in grading the branch to the dock property and other construction work which will probably be done upon reorganization.

Extraordinary expenses, as nearly as can be estimated, to the amount of about $8,000 have been paid for legal services not connected with the operating department for experts and various expenses connected with investigations by the master—special train expenses, and many other things of like nature.

Table C shows an item of indebtedness of $41,133.91, surplus earning of the Iron Railroad Division, $23,565.99 of which accrued while that division was managed by the present receiver. The earnings of the entire system were thrown into one common treasury, and expenses indiscriminately were paid out of that treasury. In our accounting department the earnings and expenses of the several divisions were kept separate. These accounts were opened in the case of each division between the receiver and that particular division. The account with the Iron Railroad Division shows that it earned said amount over and above what it cost to operate it; therefore the receiver's books show that he is indebted to the Iron Division the said amount. It is no doubt a debt as between divisions, but it is equally true that other divisions owe the receiver precisely the same amount, and, taken as a whole, he is not in debt the amount named. The Toledo, Cincinnati & St. Louis railroad was operated as a whole before and since the receivership, and this item, while it is not disputed as due to the Iron Division, ought not to stand among the aggregate indebtedness without the fact also being made known that other divisions owe the receiver an equal amount. No one will deny that this amount sinks from sight the moment you view the management of the property and its aggregate indebtedness as a whole. Suppose, for instance, one-half of the
265 system had earned enough to pay the deficit of the other half.

In the operation of the property as a whole there would be no debt, but upon tearing the property into eight pieces and awarding to each division its proper proportion of earnings an indebtedness would be created against the receiver equal to the amount of the deficiencies created by one-half of the property.

If, therefore, it is proper to deduct the aggregate of these last-mentioned items, amounting to $55,049.91, from the $262,183.59, with which the present receiver is properly chargeable, as an operat-

ing deficit, it will be found that his indebtedness is reduced to $207,133.68.

Again, the aggregate indebtedness of the receiver as stated by the master in his report is in reality too great by $58,915.62, because there was paid from receiver's earnings corporation debts to the amount of $58,915.62 over and above the total amount of money and assets received from the corporation.

Thus far reference has only been made to the indebtedness chargeable to the management of receiver, and it is believed that such indebtedness will compare favorably with the results produced by the numerous managers of the corporation.

On page 17 of the master's report it is stated that during six months prior to the first appointment of a receiver the operating expenses were $274,908.08 in excess of earnings. That amount does not include delinquent taxes or car rentals; neither does it include the amount of corporation debts since paid by the receiver, as referred to above, to wit, $58,915.62.

In addition to this prior to the six months next preceding the appointment of a receiver the floating debt of the road amounted to $244,079.68.

Add to those amounts the sum of $5,084.97, Cincinnati Northern railway debts assumed by the consolidation, and we have the aggregate of $582,988.35, which sum represents the net loss in operating for a period of time preceding the receivership equal in length to the time the receivership has existed.

So far as the administration of the property under the receivership is concerned, the apparently large debt created during the receivership wastes away when the distinction is pointed out between the debts upon the property and those actually created by the receiver and chargeable to his management.

Pay-Rolls and Expenses.

The most rigid economy is being practiced in the management of the road and a continued effort made to reduce expenses wherever possible, as may be seen by the following statement of pay-rolls and expenses for 1884:

1884.	Pay-rolls.	Total expenses.
January	$92,395 31	$137,361 83
February	84,903 03	134,319 35
March	83,141 02	108,046 24
April	73,483 77	95,789 13
May	70,559 69	93,328 61
June	66,833 72	78,119 30
July	57,389 39	80,221 60
August	39,329 93	51,813 77
September	38,732 36	47,282 42
October	36,157 56	45,029 10
November	31,114 06	44,154 91

The expenses in January and February were largely increased by the extreme cold in the first month and floods in the second. The total expense column is just what it implies, and includes cross-ties and other renewals, all supplies, pay-rolls, repairing losses by Dayton fire, and any other expense incurred, except rail renewals. The last four months are for the main line only.

266 *History and its Effects.*

The Toledo and St. Louis Divisions were made up by the consolidation of the Toledo & Maumee R. R., Toledo and Grand Rapids R. R., Toledo, Delphos & Indianapolis R. R., Delphos & Kokomo R. R., Delphos, Bluffton & Frankfort R. R., Frankfort, St. Louis & Toledo R. R., Frankfort & Kokomo R. R., Frankfort & State Line R. R., Vermillion & State Line R. R., Tuscola, Charleston & Vincennes R. R., and the Charleston, Neoga & St. Louis R. R., ten of which, in their separate corporate capacity, constructed a portion of their several railroads.

The history of the construction performed by these constituent companies may not of itself be of sufficient interest to find a place in this paper; but the work so performed has such direct and far-reaching influence over the present physical and consequent financial condition of the consolidated company's affairs that it is thought proper to give it a small space here, with the hope that whoever reads will read carefully and determine what has been the effect of such work.

About the year 1872 a narrow-gauge road was built from Toledo to Maumee City, or South Toledo, about eight miles. It was constructed entirely for suburban traffic and was very flimsily built. The ties were six feet in length and small in proportion, and the iron rail weighed but 25 pounds to the yard. It was provided with two locomotives, one weighing eight tons and other ten tons, and had four box cars and two small passenger coaches. This brief summary enumerates everything that belonged to that road except a very diminutive water-tank at South Toledo. Its Toledo terminus was practically at the edge of the city, although some track was laid along one side of Broadway, a distance of about one-half mile, to a connection with the street cars. The locomotives were not allowed to run over the track laid on Broadway, and in order to transport passengers over this intervening space the coaches were drawn by horses. There were no depots, shops, turn-tables, or other conveniences.

Several years later the Toledo & Grand Rapids R. R. Co. was organized to build from the terminus of the Toledo & Maumee R. R. to Grand Rapids. They succeeded in placing iron on that road from South Toledo to Waterville, a distance of about six miles, and did a considerable part of the grading still further southwest to Grand Rapids. The character of construction was precisely similar to that employed by the builders of the Toledo & Maumee R. R. As the Toledo & Grand Rapids road had no equipment or conveniences the train service of the Toledo & Maumee R. R. was extended

to Waterville. Thus far the work was probably sufficient to answer the purpose for which it was intended; and at that time it is not probable its projectors dreamed that their little 15 miles of 25-pound iron would become a part of a railroad 450 miles in length, equipped with locomotives weighing 36 tons each. This has resulted, yet very many of those diminutive ties are still in the track, and a portion of the same iron rails are still in use.

About the year 1877 the people of Delphos felt the necessity of reaching out into the great belt of timber north of them to secure supplies for the numerous wood-working establishments located at Delphos. They commenced building a narrow-gauge road for the sole reason that it was cheaper than a standard gauge, and they were entirely dependent upon local capital for funds with which to build any kind of road. Individual subscriptions were made at Delphos, Ft. Jennings, and Dupont, and the company, under the name of the Toledo, Delphos & Indianapolis railroad, commenced the work of construction with no other resources than patriotism and the local subscriptions, amounting to about $2,000 per mile. By purchasing rail of the weight of thirty pounds to the yard and other materials of the lightest and cheapest character they succeeded in constructing their road from Delphos to Dupont, a distance of about sixteen miles. They had no depot buildings or other business conveniences.

In 1878 the Toledo & Grand Rapids Company agreed to extend their road to Holgate if the Delphos people would extend their line to Holgate, thus making a continuous line from Toledo to Delphos, a distance of seventy-four miles. During 1878, in compliance with this agreement, the Delphos people succeeded in pushing their line through to Holgate, but, like the rest, it was of nothing more than the poorest kind of ties, cheap trestle-work, and thirty-pound iron laid along on top of the ground, with about one-half of the right of way secured. The Grand Rapids Company did nothing towards extending their road to Holgate.

267 During the year 1878 a narrow-gauge road was constructed from Bluffton, Indiana, to Warren, a point thirteen miles southwest, and some grading was done between Bluffton and the Ohio State line at Willshire. Some preliminary work was also done between Delphos and Willshire by still another company, and in the same year quite a number of companies were organized in various parts of Ohio and Indiana.

Very early in 1879 all these roads were so deeply involved in debt that relief of some kind was imperative. A gentleman from New York State expressed a willingness to take upon himself the work of relief. To accomplish this he procured the consolidation of the first five of the local roads above mentioned, which five made a continuous line from Toledo to Kokomo, Indiana, and which were, when consolidated, named the Toledo, Delphos & Burlington railroad. Under his administration, during the year 1879, the gap between Bluffton, Ind., and Delphos, O., was closed, and the Toledo end of the road was completed southwest to Grand Rapids. Thus matters stood at the end of the year 1879, at which time there were

120 miles of iron laid on the Toledo, Delphos & Burlington road between Toledo and Warren, with the gap of eighteen miles uncompleted between Grand Rapids and Holgate. Every particle of this 120 miles was constructed on local capital alone, no bonds having been negotiated. The builders thus far were, therefore, compelled to purchase the cheapest material possible, using no place a rail more than thirty pounds in weight, ties nowhere more than six feet in length, and their trestles were built of timbers eight and ten inches square. The entire road had but two depot buildings, both of which are still standing, one at Delphos, O., the other at Bluffton, Ind. One cost $400, the other about half that sum.

The companies commenced construction with local subscriptions insufficient to build even this kind of a railroad, and, as is always the case, they encountered a very material shrinkage in subscriptions before completing the work, there being in all localities at least 25 per cent. of uncollectible local aid. The natural result of this would be a railroad very badly constructed—without water-tanks, turn-tables, depot buildings, repair shops, and tools and all of those things which are necessary to successfully operate a railroad. At that time, after the collection of all subscriptions possible and after the expenditure of all moneys which the company could in any manner obtain, the Toledo, Delphos & Burlington railroad found itself $321,000 in debt; in fact so badly in debt that those connected with the enterprise were unable to sustain it any longer.

In November, 1879, the company succeeded in interesting some Eastern gentlemen, who agreed to furnish $840,000 to pay the then existing debts and supply the link between Grand Rapids and Holgate. Early in 1880 this was done, so that there was a continuous line from Toledo, Ohio, to Warren, Indiana, a distance of 138 miles. There being at that time something of a financial boom, the Eastern parties began to succeed in placing the bonds of the Toledo, Delphos & Burlington railroad, and with the proceeds thereof the road was extended from Warren to Kokomo, about 43 miles.

The line from Kokomo to East St. Louis was composed of 5 different railroad organizations, above named, and these, with the Toledo, Delphos & Burlington, were consolidated, and are now the Toledo and St. Louis Divisions of the Toledo, Cincinnati & St. Louis railroad. The enlistment of Eastern capital into the enterprise enabled its managers to do much better work on the extensions west of Warren. The embankments were 10 feet wide on top; the excavations 16 feet wide at the bottom; ties 6½ and 7 feet in length, with not less than 7 inches face; the rail is 40 pounds per yard in weight, 4,000 tons of which is steel, and the work generally was of a much more respectable character than that which had been previously done. In the trestle-work west of Warren the sills, caps, plumb posts, and batter posts were of live oak, 12 inches square, and the other members of the structures proportionately heavy. Ten-inch square were the heaviest corresponding pieces in the trestles east of Warren, where, also, the Howe truss bridges, with one exception, were built with a capacity to sustain a rolling load of but 1,800 pounds per lineal foot. West of Warren the Howe trusses

were built to sustain a rolling load of 3,000 pounds per foot. No depots or water-tanks of any consequence were erected east of Kokomo during the days of construction, while west of that point proper provision was made in that regard. It will therefore be observed that the best constructed portion of the road is from Warren, Ind., to East St. Louis, and, as it is not already worn out, it requires less repair. The light iron, light trestles, and generally flimsy work which was done east of Warren has been in
268 service 6 and 7 years on an average. It is actually worn out, and every particle ought to have been replaced with heavier material before this time.

At the outset the locomotives weighed 10 and 12 tons each, but gradually, as additional locomotives have been purchased, the weights have been increased, until now some of them are of the weight of 36 tons each.

This history is recited to show why some items of expenses in operation of the road are enormous, and the details of construction are entered into to show why the expenses of a portion of the road have been in excess of the remainder. Under the most favorable circumstances a road constructed as this has been would necessarily, after the lapse of 6 or 7 years, be in very bad repair. Some renewals have been made between Toledo and Grand Rapids, but from the latter point to Warren the road, as originally constructed, has been compelled to carry the heaviest part of the business.

The rapid changes in management have, perhaps, indirectly had much to do with the present condition of the property. From the year 1878 until the appointment of a receiver, in 1883, there were 7 general managers, namely, Williams, Hunt, Burgoon, Irvine, Butler, T. A. Phillips, and Dwight, and during the period mentioned there were 6 presidents, namely, Hunt, Ostendorf, Lowe, Corse, Pomeroy, and E. B. Phillips. Of course, there was a new order of things with each president and each general manager. As each one retired his successor felt it necessary to make immediate and radical changes and to inaugurate his own peculiar ideas and methods. The effect of these rapid changes of method necessarily brought with it more or less loss. The best illustration of this lies in the fact that at the beginning of this receivership there were upon the Toledo, Cincinnati & St. Louis R. R. no less than 29 different classes of locomotives, as follows:

Porter & Bell,	12	tons each,	3	locomotives.
"	18	"	2	"
Baldwin,	12	"	1	"
"	18	"	6	"
"	20	"	2	"
"	25	"	1	"
"	28	"	5	"
"	32	"	1	"
Pittsburgh,	12	"	1	"
"	14	"	1	"
"	25	"	1	"

Pittsburgh,	30	tons	each, 3	locomotives.
Mason,	20	"	1	"
"	24	"	1	"
"	26	"	4	"
"	36	"	6	"
Hinkley,	26	"	5	"
"	33	"	6	"
"	35	"	6	"
Porter (H. K),	24	"	4	"
Brooks,	18	"	3	"
"	22	"	2	"
"	24	"	1	"
"	30	"	8	"
Nat'l Loco. W'rks,	12	"	1	"
Paul & Son,	22	"	3	"
Rome, N. Y.,	32	"	4	"
Grant,	30	"	10	"
"	24	"	10	"

Any mechanic will testify that so many classes of locomotives would necessarily increase the expenses of the mechanical department to procure patterns for each class and be constantly making a different class of repairs.

These same facts are to a considerable degree true of the balance of the equipment. It is highly probable that there can be found upon this road one or more cars built of a dimension or specification similar to that of any other narrow-gauge car in existence.

The road has always been poor, and the natural result of faulty construction, together with the frequent changes of mangement, has been to keep the operating department poor. Every dollar that could possibly be earned has been put into the road to make good a right of way that was not more than half obtained at the outset and to maintain a roadway which in the first instance was not half built.

Large portions were turned over to the operating department
269 in such condition as to more than exhaust its resources by requiring the employment of an extraordinarily large amount of labor to so prepare the track that a locomotive could get over it at all. Those same portions are to-day entirely destitute of ballast, and the rail which was originally laid is still there. Is it any wonder that the earnings of such a road should be more than exhausted in the work of operating it?

As proof of this it may be stated that from the 1st of November, 1883, to July 1st, 1884, the repairs to roadway and track on the Toledo Division, 181 miles, was $48,383.96 as against $34,857.39 for the St. Louis Division, 268 miles; or, in other words, indispensable repairs of roadway and track of the Toledo Division for the time mentioned was $267.31 per mile as against $130.06 for the St. Louis Division per mile, making the cost of keeping up the Toledo Division per mile more than double that of the St. Louis Division. Again, from November 1st, 1883, to July 1st, 1884, the cost of repairs to locomotives, passenger cars, and freight cars on the Toledo

Division was $30,012.26 as against $19,022.06 for the St. Louis Division, or $292.88 per mile of Toledo Division against $70.97 for the St. Louis Division.

The effect of flimsy material in the first instance, more particularly light rail, will still further be observed when it is stated that east of Warren, where about 100 miles of the light rail is to be found, there were 1,104 broken rails from the 1st of December, 1883, until April, 1884, while between Warren and East St. Louis, about 340 miles, where the rail is all 40 and 50 pounds in weight, there were but 30 broken rails in the time specified. From April, 1884, until December, 1884, there was but one broken rail on the St. Louis Division, while during the same period there were 88 broken rails on the Toledo Division. Every broken rail costs something—very frequently much more than simply track repairs.

Of 58 wrecks within a given time on account of track alone 49 were on the Toledo Division and 9 on the St. Louis Division. The damage occasioned in some instances was inconsiderable. Every derailment attended with the slightest damage is duly chronicled as a wreck.

The receiver found no surplus rail on the Toledo Division, and was compelled to go to the spur tracks and sidings and take therefrom rails to repair and replace those which were broken in the main track. This was carried to such an extent that, as an absolute necessity and by a permission of court, 1,000 tons of steel rail, weighing 56 pounds per yard, was purchased early last spring and put in the track from Waterville, Ohio, to a point a short distance west of Grand Rapids. The laying of this 1,000 tons was commenced on the 13th of March and finished on the 11th of April, 1884, and from that day to the present not a wheel has been off the track where that rail was laid, nor have there been any breakage of rails there. It is certainly safe to assert that the wear and tear to machinery is very much less, and it requires very much less section work to keep that track in good order than where the rail weighs only 30 pounds to the yard.

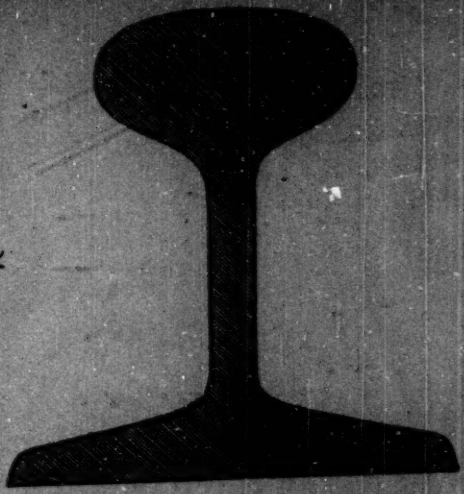
Incidentally it may be mentioned that the rail on a considerable portion of the Dayton and Southeastern Division was in such a bad condition that a similar effort was made by the receiver to procure a few miles of new rail for that division. The court declined to grant the application, but one of the first moves made by the purchasers was to procure 1,500 tons of 60-pound steel, which they have laid in their track, and have arranged for a still further supply.

The receiver also made an effort to obtain permission to purchase enough heavy rail to replace the light rail east of Warren, but was met with the objection that the road could not afford to pay the 6 per cent. interest on the certificates necessary to make the purchase. All the while, however, repairs to equipment and road have been much more than the interest on the amount of certificates necessary for that purpose. Expenses would have been largely reduced and earnings increased.

(Here follow diagrams marked pp. 270*a* & 270*b*.)

270a

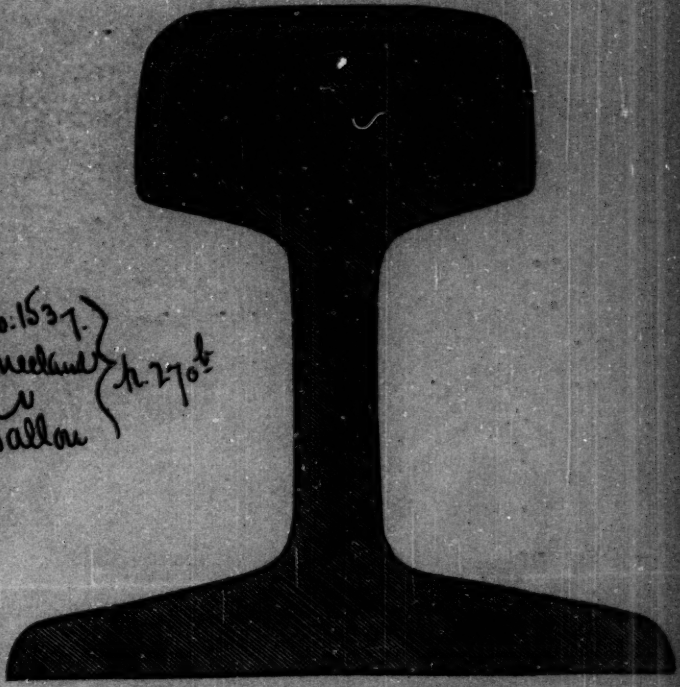
No. 1537.
Kneeland
v
Ballou
p. 270a



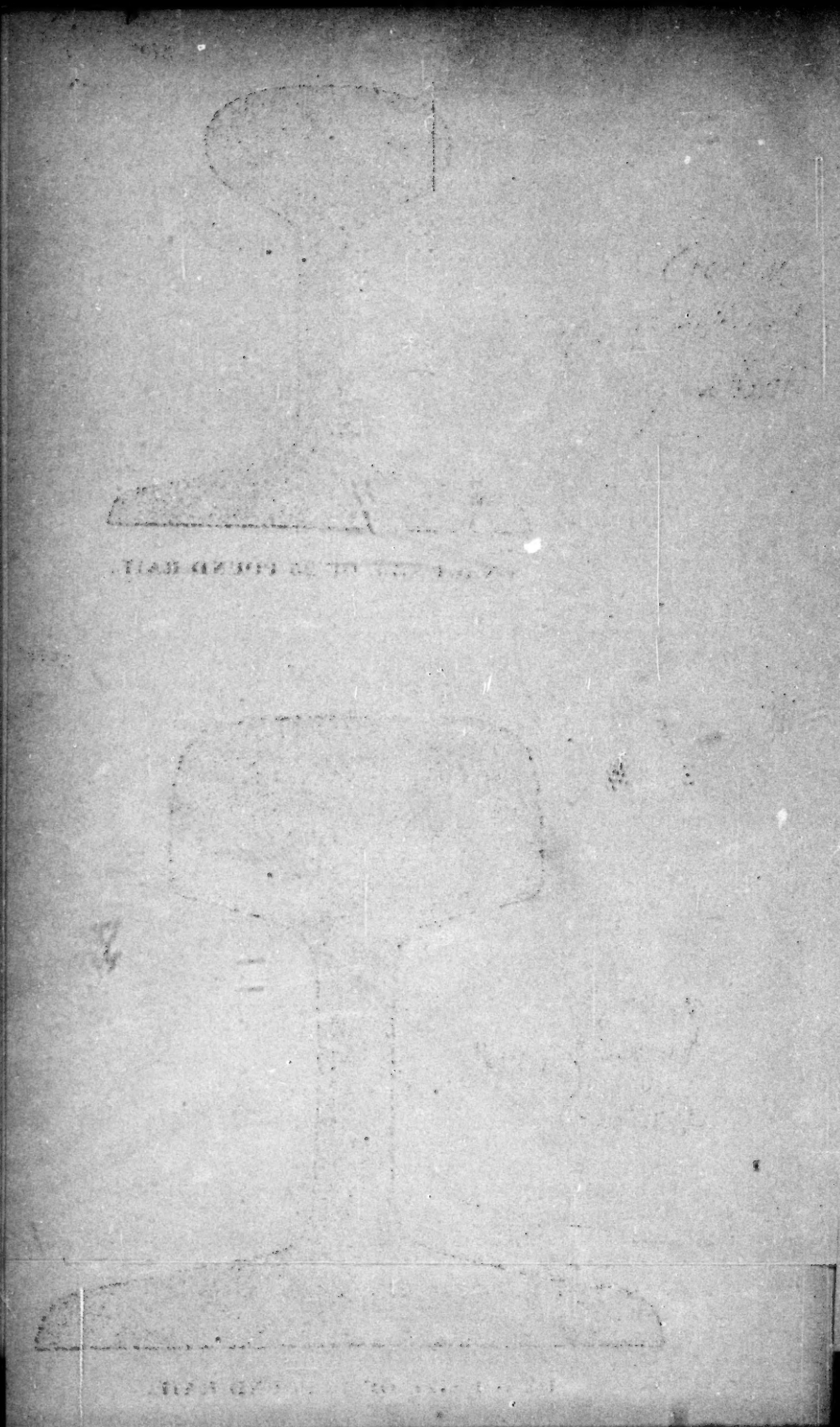
EXACT SIZE OF 25 POUND RAIL.

270b

No. 1537.
Kneeland
v
Ballou
p. 270b



EXACT SIZE OF 56 POUND RAIL.



270 *Comparative Earnings.*

During the year 1884 the business of railroads suffered immensely. In the history of the T., C. & St. L. R. R. no other year has witnessed a steady and rapid decline in all branches of industry and a consequent decrease of business. The severity of this financial depression has had its effect on nearly every railroad in the country. The following list, taken from The Financial Chronicle, shows the decrease of earnings during 1884 as compared with 1883. Fifteen of these roads connect with the T., C. & St. L. R. R. Nearly all of them are in excellent physical condition and prepared to do business economically.

Decrease in 1884 as compared with 1883:

271 Burlington, Cedar Rapids & Northern	$50,313
Central Pacific	2,636,286
Chesapeake & Ohio	385,717
Chicago & Alton	103,119
Chicago & Eastern Illinois	104,350
Chicago, Milwaukee & St. Paul	186,818
Chicago & Northwestern	1,658,363
Cincinnati, Indianapolis, St. Louis & Chicago	50,016
Cincinnati, Washington & Baltimore	148,554
Cleveland, Akron & Columbus	46,026
†Cleveland, Columbus, Cincinnati & Indianapolis	450,788
Denver & Rio Grande	903,969
Detroit, Lansing & Northern	267,166
*East Tennessee, Virginia & Georgia	152,511
Flint & Pere Marquette	303,202
Grand Trunk of Canada	2,151,945
Green Bay, Winona & St. Paul	86,497
Gulf, Colorado & Santa Fé	359,605
Illinois Central	854,691
Indiana, Bloomington & Western	286,593
Lake Shore & Michigan Southern	3,611,656
Louisville & Nashville	520,235
Marquette, Houghton & Ontonagon	79,304
Michigan Central	2,288,767
Mobile & Ohio	104,881
Norfolk & Western	115,602
*Northern Central	599,371
*New York, Lake Erie & Western	3,272,202
*Ohio & Mississippi	443,891
*Pennsylvania	2,445,152
Shenandoah Valley	121,828
St. Louis, Alton & Terre Haute	292,629
St. Paul & Duluth	7,797
St. Paul, Minneapolis & Manitoba	119,213
*South Carolina	96,005
Toledo, Cincinnati & St. Louis	61,167
*Utah Central	113,648

Wabash, St. Louis & Pacific	212,082
Wisconsin Central	12,604

*11 months ending December 1, 1884.
†9 months ending October 1, 1884.
‡To July 22, date of transfer of southern divisions. Cincinnati Northern Division was consolidated May 31, 1883, and is not included in this statement.

Bonded Indebtedness.

First-mortgage bonds, as shown by corporation records:

Toledo Terminal	$250,000
Toledo Division	1,250,000
St. Louis Division	2,924,000
Frankfort & Kokomo R. R.	76,000
Dayton Division	1,000,000
Dayton & Southeastern Division	2,236,000
Dayton & Southeastern R. R.	14,000
Cincinnati Division	250,000
Iron Division	500,000
Cincinnati Northern Division	1,000,000
Avondale Branch (?)	600,000
	$10,100,000

Second-mortgage bonds:

Toledo Division	$1,221,000
St. Louis Division	2,706,000
Dayton Division	964,000
Dayton & Southeastern Division	1,917,000
Cincinnati Division	209,000
Iron Division	485,500
Cincinnati Northern Division (?)	600,000
	$9,102,500

272 *Toledo & St. Louis Divisions.*

That portion of the system located south of Delphos having passed into the hands of the purchasers of the several divisions in July last, it will be of interest to no one to discuss its past history or present condition.

The litigation pending in regard to the Toledo and St. Louis Divisions and the probable early reorganization of the same renders it proper to give the facts in relation to them. The location of the main line and much else connected with it is good. The eastern terminus is a prosperous city of 75,000 souls, with 13 railroads, only one of which is in direct competition with the T., C. & St. L. The present terminal is as good as any in the city for local purposes' being as near the center of business as that of any other road and of sufficient dimensions to accommodate a very large business and

storage of cars. At the principal yards and transfer grounds is located a grain elevator of 200,000 bushels' capacity. More than $50,000 has already been expended upon a branch which, when completed, will be about a mile in length. Leaving the main line at a point near the southwest boundary line of the city, it runs a northeast course to a point on the Maumee river, where a substantial dock, 1,000 feet in length, is nearly completed. None of the grading on this dock branch has yet been done, but the right of way has already been secured, and it would not take long to fully prepare it for lake business. Another elevator will undoubtedly be located at the dock, so that such grain as might be desired to go forward by lake could be placed in the dock elevator and spouted into vessels. The Toledo Belt Railway Company propose extending their line along the east bank of and across the river to a point near where this dock branch strikes the river, so that when the Belt is completed it will be an easy matter to make such connection as will give the T., C. & St. L. every advantage possessed by the other roads centering at this point.

At East St. Louis the location is as good as could be secured, occupying the most valuable ground not already in use by other railroads. Immediately adjoining the East St. Louis terminal of the Wabash railway is a piece of ground 225 feet by 900 feet in extent, purchased of the Wiggins Ferry Co. by the T., C. & St. L, and fronting upon the Mississippi river, upon which the present business is located. In time more yard room will probably be necessary, but can be secured further back from the river. The transferring of loads and empties from one yard to the other may be done by switch-engines. Should the gauge become the standard the yards need not necessarily increase with the increase of the business. Many cars would go direct to the yards of other railroads—to elevators, stock yards, mills, or over the bridge into Missouri. In such event, too, all passenger trains would discharge their loads at the union depot in the city of St. Louis, leaving the present terminal to local freight business.

Between Toledo and St. Louis there is not a mile of territory that is not freight-producing. The entire line runs through an excellent grain-growing district, touching the fertile valleys of the Maumee, Auglaize, St. Mary's, Wabash, Salamony, Mississinewa, and Wild Cat, in Ohio and Indiana, and traversing the very best wheat belt in Illinois. A large tonnage can always be drawn from the stone quarries, coal-fields, and forests through which the road passes. In the villages and country towns along the line are the usual number of mills of all kinds, and nearly every station is supplied with a suitable grain elevator. At every station, too, are found saw-mills, lumber yards, hay-presses, cattle-pens, and other accessories of a prosperous railroad business. It may, therefore, be said that the local business of this road will naturally be equal to that of other roads traversing the same sections, and when this road is in proper shape to successfully compete for through business the earnings from that source will certainly be equal to that of its great competitor.

The road is supplied with a fair quantity of depot grounds and

side-track room. This is particularly true in Illinois, where the grounds would be found ample for any future business. At various points in Ohio and Indiana it will in the future be necessary to acquire some additional grounds in case the road should be changed to a standard gauge and its business increase as might naturally be expected. Its entrance into and location through the various cities and villages is beyond criticism. In the original location of the road care was taken to so locate it that it could compete successfully for business. At all competitive points the location is as good as that of other railroads at those points. At a great many towns the location was naturally made, while at others, such as Bluff-
273 ton, Marion, Kokomo, and Frankfort, the location was secured in each case at a very considerable expense over and above other less desirable locations which were offered.

The water-tanks generally are equal in capacity and construction to those of standard-gauge roads. The depots and other buildings are respectable and will answer the purpose for a long time to come, with very few additions. Very many of them are of uniform size and appearance, the St. Louis Division especially being very well provided in that respect.

Location and Weights of Rails.

Location.	Miles of iron rail.					Miles of steel rail.			Miles of sidings.
	25 lb.	30 lb.	35 lb.	40 lb.	50 lb.	40 lb.	50 lb.	56 lb.	
Toledo Terminal	------	------	1.40	1.40	------	------	------	------	4.13
Toledo Division	1.30	67.65	32.20	58.25	------	------	7.60	11.50	17.21
St. Louis Division	------	4.80	------	181.30	21	61.30	------	------	12.04
Total	1.30	72.45	33.60	240.95	21	61.30	7.60	11.50	33.38

Equipment.

Exclusive of the Iron Railroad Division, which is of 4 feet 10½ inch gauge and owned its own rolling stock, the total equipment of the consolidated company was—

96 locomotives.
58 coaches.
10 combination cars.
13 baggage, mail, and express cars.
12 cabooses.
1,250 box cars.
174 stock cars.
614 flat cars.
1,573 coal cars.

The southern divisions were sold in June and delivered to the purchasers on the 22d day of July, 1884. The rolling stock belonging to the Cincinnati Northern, Dayton & Southeastern, and Dayton Divisions have been returned to those portions of the road. Further than this no division or placing of any part of the equipment was made in consequence of the sale and delivering of those divisions. The receipts given by the purchasers to the receiver cover "all the rolling stock, engines, — equipment belonging to said railroad and by him used in the operation of the same as receiver and now in his possession." Therefore the position is taken that the divisions are severally responsible for whatever equipment was upon each on the 22d of July. On that date there were on the Toledo and St. Louis Divisions—

49 locomotives,
2 combination cars,
11 cabooses,
7 baggage, mail, and express cars,
26 coaches,
553 box cars,
84 stock cars,
267 coal cars,
122 flat cars,

274 of which we have since delivered to the order of the equipment owners 2 locomotives, 3 baggage cars, and 8 coaches. Included in the above-mentioned 49 locomotives are 5 which were procured by Receiver Dwight from the Brooks Locomotive Works and two which are not included in equipment leases, being company property.

The equipment has proved the most serious problem of any connected with the road. Immediately after the appointment of a receiver it began to be very generally conceded that the gauge of the road should be changed to standard before it could be hoped to be successful. Following the organization of bondholders' committees it was admitted that such must be the result. These admissions produced an uneasiness in the minds of the equipment owners, and their doubts gradually became a certainty as one after another the narrow-gauge roads in this same section of country became involved and passed under the protection of the courts, and it became evident that there would soon be little, if any, demand for narrow-gauge equipment. The adaptability of narrow-gauge railroads to a prairie country was never settled until within the past eighteen months. In 1881 it was evident that the Toledo, Cincinnati & St. Louis railroad would be completed from Toledo to East St. Louis, making a connection there with the Cairo & St. Louis railroad. The Texas & St. Louis road was being rapidly constructed from Cairo, through Missouri, Arkansas, and Texas, to a connection with the Mexican National railroad, which was partially constructed from Laredo to the City of Mexico. It looked then that by the present time there would be a continuous line of narrow-gauge railroads from Lake

side-track room. This is particularly true in Illinois, where the grounds would be found ample for any future business. At various points in Ohio and Indiana it will in the future be necessary to acquire some additional grounds in case the road should be changed to a standard gauge and its business increase as might naturally be expected. Its entrance into and location through the various cities and villages is beyond criticism. In the original location of the road care was taken to so locate it that it could compete successfully for business. At all competitive points the location is as good as that of other railroads at those points. At a great many towns
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Erie to the City of Mexico. Narrow-gauge roads projected in all directions. The Indianapolis, Delphi & Chicago railroad was constructed from Delphi, Indiana, to Rennsalaer, with the expectation of its early completion to Chicago and to a connection with this line and further south to Indianapolis. The Marion & Indianapolis narrow gauge was projected and surveyed. Nearly 200 miles of narrow-gauge road in Southern Indiana and Illinois was constructed to within eighteen miles of a connection with the T., C. & St. L. Very many other roads of similar gauge in Ohio, Indiana, Illinois, Missouri, Arkansas, and Texas were talked of with great confidence. It was at that time fair to presume that there was about to be erected a system of narrow-gauge railroads that would be profitable. The T., C. & St. L. occupied the very best position in the proposed system and promised the greatest profits. At the critical moment the present great financial depression commenced, and one after another they failed. None of them were in condition to make what was simply a fight against adversity. Those narrow-gauge roads, through their weakness, occasioned by reduced earnings and lack of financial support, failed to develop that degree of success which might have been theirs under favorable conditions, and the result has prompted the whole world to jump to the conclusion that they are of themselves a failure. The master in his report, page 27, "finds that the opinion of railway experts tends to regard narrow-gauge railroads as unable to compete successfully with those of the standard gauge; that this opinion has become prevalent of late, and that it affects the value of such roads and of the rolling stock adapted to them by lessening the demand for them in the market, making a difference of 30 or 40 per cent. in the probable selling price of rolling stock exclusively adapted to narrow-gauge roads less than that of similar construction and original cost adapted to the standard-gauge roads." In a paper connected with this case the statement is made that "the experiment of narrow-gauge roads had at the time of the appointment of this receiver already culminated in absolute failure."

The master in his report also "finds that this discrediting of narrow-gauge roads came to a head about the time of the appointment of a receiver in these cases, and that the embarrassment of the T., C. & St. L. R. R. Co. was an important factor in such descrediting and in the consequent depreciation of the value in the market of such narrow-gauge rolling stock."

If this be so, here are more than 3,500 cars and locomotives which by the failure of this road became comparatively worthless, because they can be used on no other gauge and because this gauge will not much longer demand them.

The total cost of this equipment was about $2,000,000, and is represented by equipment bonds sold at par. The equipment bondholders say that they do not desire to take back the cars, because they furnished them under the terms of their contracts in good faith and expected to receive in money the amounts nominated in the bonds.

275 Early in this receivership an attempt was made by the

trustee's attorney to so compromise this matter as that substantial justice might be done both parties. In the attempted compromise it was proposed that the equipment owners should finally receive a considerable proportion of the original cost and the equipment bonds be cancelled. It were better, perhaps, that such settlement had been consummated, as it is probable that in the end all parties would have been as well off, and everybody in any way connected with the property or the case would have been saved many vexations. The situation was, however, without precedent, and the equipment owners urged that they had a right to expect that the contract executed by the railroad company, for which they had specially prepared this equipment, would be carried out or enforced by law. They did not accept the opportunity, and, with the increased financial depression of the country, it has month by month become more and more apparent that an adjustment of the question cannot be made to the satisfaction of all parties.

The position assumed by the first-mortgage bondholders shows that there are two sides to this question. The master in his report, pages 27 and 28, says: "Justice will be done if the rental be fixed at what would be an ordinary renting price of engines and cars of similar cost upon standard-gauge roads." Whereupon one of the parties, in a brief filed in this case, says: "Is this finding not directly opposed to every possible consideration of justice and equity? The receiver of a narrow-gauge road which confessedly is powerless to 'compete successfully' with a standard-gauge road must pay for the use of this depreciated equipment just precisely as much as the owner of a successful standard gauge. On what principles of equity it is done we cannot conceive. The records of the receiver and the master's report of his earnings and expenses show too well that narrow-gauge roads cannot successfully compete with the vast established system of standard-gauge roads. The one is operated successfully; it makes money. The other is not, and every wheel turned increases its misfortune. The rolling stock of each is an incident, and its fortunes rise and fall with the system to which it pertains."

"If the master had found that the narrow-gauge system was a failure; that it could not compete successfully with its more favored rivals; that narrow-gauge equipments were as a consequence depreciated 30 to 40 per cent. in value below the value of standard-gauge equipments of similar cost, and that there should be a proportionate reduction in rentals, could it have been said by the car-owner justice has not been done? We are unable to conceive how it is possible to start from positions so entirely dissimilar and bring the owners of narrow and standard gauge equipments to a plane of absolute equality as to rental values. But the master would have the receiver of this unfortunate property, which was unable to 'compete successfully,' pay just as much for the use of other equipment for which there was no demand as he would have the Pennsylvania, Lake Shore, or any other profitable and successful railway pay for the use of standard-gauge equipment, for which there was a universal demand."

The master reports a table of rentals, under which he finds that the sum of $403,997 should be charged for the use of this equipment from the time a receiver was appointed, August 1st, 1883, to July 1st, 1884. Following are the monthly rentals recommended:

Locomotives	$160
Coaches	50
Baggage, mail, and express and cabooses	25
Box cars	8
Stock cars	12
Coal cars	7
Flat cars	6

One of the parties in his brief says: "It is safe to say the award is fully equal to from 40 to 50 per cent. of the actual value of the equipment, a return that the most sanguine car-owner could scarcely ever have dreamed of."

In placing the receiver's debt at about a million dollars it should be remembered that this amount ($403,997) is a part of that million dollars. If the courts shall confirm those rentals, then, although that degree of indebtedness shall have become a fixed fact, it ought in justice to be remembered that the receiver did not procure this rolling stock, nor had he anything to do with placing it on the road.

The bondholders further contend that the receiver ought not to be charged with the entire amount of repairs necessary to put the equipment in good repair and working condition, and they argue that whatever repairs may be necessary should be "apportioned to each management which in the nature of things
276 contributed thereto; that it would be unjust to charge this entire amount to the person who might happen to have possession of the cars during, say, the last eight months of the entire period of their service."

The repairs recommended by the master are an average of $1,000 for each locomotive and an average of $20 for each car.

The matter of the amount to be allowed for car rentals and repairs is pending in the courts for decision, and it would not be becoming for the receiver to express an opinion in regard thereto. Reference has only been made to this subject because so large a part of the debt charged against him is composed of these rentals and repairs, and the reduction thereof to a rate claimed to be just by the representatives of the mortgage bondholders would largely reduce the amount of debt with which he is charged by the master.

Car-Trust Leases.

The placing of rolling stock upon this road has been done at so many different times and by so many different persons, and the records were so imperfectly kept or no attempt was made to keep any record, that an absolutely correct statement cannot be made. Until June, 1882, there was no car accountant and practically no car records. Prior to that date some of the cars had been destroyed, and the records in the general offices contain no account of such.

In several of the series the full amount of cars called for was not delivered to the road. Some of the equipment originally in the Boston car trusts were transferred to the Massachusetts car trusts.

Mr. Geo. Wm. Ballou is trustee of the Boston car trust. Mr. W. A. Holmes, prior to his death, was co-trustee with Mr. Ballou.

The American Loan & Trust Company of Boston is trustee of all of the Massachusetts car trust except series B and G.

Mr. David B. Paul, of Philadelphia, is trustee of series B and G, Massachusetts car trust.

Five locomotives, 2 coaches, 5 stock cars, 50 box cars, and 60 flat cars, originally leased from various parties by constituent companies, were transferred to the Clark, Post & Martin lease.

The following exhibit, made up from the corporation records, may not be perfect in every particular, but it will be convenient for reference and as a basis for future investigations:

277 *Boston Car Trust.*

Class.	Series.	Calls for.	Numbered.		Builders.
			From	To	
Locomotives	A	6	12	17	Mason.
Flat cars	A	80	301	380	301 to 350, Billmeyer, Small & Co. 350 to 380, Barney & Smith.
Box cars	A	10	557	566	Pennock Bros.
Trucks	A	200	2037	2236	
Locomotives	B	6	18	23	Hinkley.
Flat cars	B	100	381	480	381 to 400, Barney & Smith. 401 to 480, U. S. R. S. Co.
Box cars	B	70	567	636	
Trucks	B	22	2237	2258	
Locomotives	C	4	24	27	H. K. Porter.
Coach, first class	C	7	8	14	8, Jackson & Sharp. 9 to 14, Brill.
Coach, second class	C	6	15	20	Brill.
Baggage & express cars	C	4	4	7	Brill.
Combination cars	C	2	8	9	Brill.
Coal cars	C	24	1500	1523	U. S. R. S. Co.
Box cars	C	25	712	736	Middletown.
Flat cars	D	100	481	580	Middletown.
Box cars	D	175	737	911	Middletown.
Locomotives	E	6	28	33	28 to 31, Baldwin. 32 and 33, Brooks.
Coal cars	E	100	1524	1623	Barney & Smith.
Box cars	E	40	1000	1039	Barney & Smith.
Locomotives	F	2	39	40	Paul & Son.
Coal cars	F	134	1624	1757	Pennock Bros.
Flat cars	F	100	5000	5099	
Caboose cars	F	1	A	------	U. S. R. S. Co.
Locomotives	G	6	41	46	Hinkley.
Coaches, first class	G	2	22	23	Brill.
Coaches, second class	G	6	24	29	Brill.
Baggage, mail, & exp. cars	G	2	8	9	Brill.
Coal cars	G	26	1758	1783	Pennock Bros.
Coal cars	H	200	1784	1983	U. S. R. S. Co.
Flat cars	H	91	5100	5190	U. S. R. S. Co.

278 *Boston Car Trust.—Continued.*

Class.	Series.	Calls for.	Numbered. From	Numbered. To	Builders.
Coal cars	I	200	1984	2183	Middletown.
Flat cars	I	91	5191	5281	Middletown.
Locomotives	K	4	47	50	47, Paul & Son. 48 to 50, Rome.
Flat cars	K	18	5282	5299	5282 to 5290, Middletown. 5291 to 5299, U. S. R. S. Co.
Cabooses	K	4	B	E	U. S. R. S. Co.
Coaches, first class	K	10	30	39	Pullman.
Coaches, second class	K	5	40	44	Pullman.
Locomotives	L	1	51	------	Baldwin.
Coaches, second class	L	5	45	49	Pullman.
Baggage, mail, & exp. cars	L	6	10	15	Pullman.
Cabooses	L	5	F	J	U. S. R. S. Co.
Coal cars	L	140	2184	2323	Patterson & Co.
Stock cars	L	13	4000	4012	U. S. R. S. Co.
Stock cars	M	37	4013	4049	U. S. R. S. Co.
Box cars	M	85	912	996	(See book) U. S. R. S. Co.
Locomotives	"	2	37	38	Burnham, Perry & Williams.
Locomotives	"	2	52	53	52, Brooks. 53, Baldwin.

Massachusetts Car Trust.

Class.	Series.	Calls for.	Numbered. From	Numbered. To	Builders.
Box cars	A	250	2500	2749	U. S. Rolling Stock Co.
Box cars	B	500	2850	3349	Blain Bros.
Coal cars	"	150	2350	2499	"
Trucks	"	50 set	2259	2308	"
Locomotives	C	10	57	66	Grant.
Coaches, first-class	D	10	40	49	Pullman.
" second-class	"	10	50	59	"
Baggage, mail, & exp. cars	"	6	16	21	"
Box cars	E	100	2750	2849	Pennock Bros.
Coal cars	G	350	3350	3699	Blain Bros.
Stock cars	"	150	4050	4199	"
Locomotives*	F	10	67	76	Grant.
" *	I &	2	88	89	Brooks.
Locomotives†	I &	10	78	87	78 to 82, Hinkley. 83 to 86, Mason. 87, Brooks.

*Cincinnati Northern.
†Cincinnati Northern car trust.

279 The foregoing pages are thrown together somewhat hurriedly, but the facts and figures are believed to be correct as stated. The writer does not presume to be infallible, but urges that the conditions under which he has been obliged to work should entitle him to forgiveness for a fair amount of unsatisfactory results. Neither the railroad nor equipment comes up to a fair average in value and physical condition. Its gauge has prevented it from an economical interchange of business with the 102 railroads with which it came in competition. It was hopelessly bankrupt when the corporation ceased to operate it, and to avoid losses everybody has tried to fasten the whole indebtedness of the concern upon the receivership, in many instances successfully, as may be seen by the foregoing.

The complicated nature of the receivership has been a great embarrassment on many occasions. The nature of the property was such as to require a separate appointment for each mortgaged division as well as a blanket receivership. Official bonds were filed in each case and the incumbent qualified separately in each. These eight separate and distinct receiverships have necessitated the keeping of separate accounts of earnings and expenses, separate care of property, and an impartial stewardship as between the several portions which constitute the whole.

The management has been careful and at all times characterized by severe labor.

280 Memoranda of an agreement entered into this first day of June, A. D. 1880, by and between Messrs. Geo. Wm. Ballou & Co., of Boston, the Toledo, Delphos & Burlington Railroad Company, a corporation duly organized under the laws of the States of Ohio and Indiana, and Geo. Wm. Ballou and F. M. Holmes, trustees.

Said George Wm. Ballou & Co. agree to lease to the Toledo, Delphos & Burlington Railroad Company and the Toledo, Delphos & Burlington Railroad Company agree to hire from said Geo. Wm. Ballou & Co. the following rolling stock, viz:

Six locomotives, made by Mason Machine Works and known as T., D. &. B. R. R., Nos. 12, 13, 14, 15, 16, 17, respectively.

Eighty flat cars, and known as T., D. & B. R. R., Nos. 301 to 380, both inclusive; two hundred freight-car trucks, and known as T., D. & B. R. R., Nos. 2037 to 2236, both inclusive, and ten box cars, known as T., D. & B. R. R., numbered 171 to 180, both inclusive.

Such leasing and hiring to be in respect to said rolling stock for the period of ten years from and after June 1st, 1880, but subject, however, in all respects to the conditions and provisions hereafter set out.

The rent of said rolling stock, payable to said Geo. Wm. Ballou & Co., lessors, by said railroad Co., lessees, shall be paid as follows:

The said Toledo, Delphos and Burlington Railroad Company shall execute and deliver to said Geo. Wm. Ballou & Co. one hundred

coupon equipment trust bonds, dated June 1st, 1880, due ten years after date, each for the sum of one thousand dollars and bearing seven per cent. interest, payable semi-annually, as shall be evidenced by coupons annexed to said bonds, which said bonds shall be
281 named "series A" and numbered consecutively from 1 to 100, and which said bonds shall, except as to the numbers, be expressed in the following words and figures, viz:

(Here follow forms of bond and coupon.)

And it is agreed that said bonds and coupons shall be properly lithographed at the expense of the said Toledo, Delphos & Burlington Railroad Company.

Which equipment bonds, being so executed and delivered by said railroad company to said Geo. Wm. Ballou & Co., shall by them be received as and for said rent for the entire period of ten years from June 1st, 1880, to June 1st, 1890.

And in order to more fully protect the interests of the holders of said equipment trust bonds and in pursuance of an agreement therefor the said Geo. Wm. Ballou & Co., cotemporaneously with the execution hereof, have assigned this lease and all their rights, title, and interest in and by virtue of said lease to Geo. Wm. Ballou and F. M. Holmes, as trustees for the holders of said equipment trust bonds.

And the said Toledo, Delphos & Burlington Railroad Company hereby agrees to pay said bonds and coupons *and coupons* thereto annexed promptly when they severally become due, in the manner hereafter provided.

The said Toledo, Delphos & Burlington Railroad Company agrees to pay promptly, on the first days of June and December in each year during said period of time for which said rolling stock is leased, and beginning on December 1st, 1880, to said Geo. Wm. Ballou and F. M. Holmes, at the office of Geo. Wm. Ballou & Co., in the city of New York, the sum of six thousand dollars, which said trustees shall expend as follows:

First. They shall on the day of said payment to them pay all coupons due on any of said bonds then outstanding.

282 Second. They shall pay any and all expenses connected with their said trust.

Third. They shall devote the remainder to the purchasing and retiring of said bonds in the following manner:

At each semi-annual period as aforesaid, after said railroad company has paid said sum of six thousand dollars to said trustees, they shall notify the holders of said bonds of the amount of money remaining in their hands therefrom, after providing for the coupons then due and the expenses of their trust, and invite them to offer of said bonds to them for redemption hereunder, and as near as may be shall, to the extent of the moneys in their hands by virtue of this lease, purchase bonds so offered to them at a price not exceeding 103 and accrued interest; and if none or not sufficient be offered within such price, then such trustees shall determine the

amount of bonds they can purchase with the funds in their hands for that purpose, at a price not exceeding 103 and accrued interest, and shall then determine by lot what of said bonds shall be called in, and having so determined, shall notify the holders thereof, by publication or otherwise, to forthwith, and within a time to be named deliver up said bonds for redemption, and after the time so named, all interest on said bonds shall cease and the holder of the bonds so called shall deliver the same to said trustees, and said trustees shall pay therefor to the holder 103 and accrued interest.

The manner of determining by lot which bonds shall be called, the manner and time of giving notice, the time when interest shall cease on the bonds so called, and all other details connected with the convenient execution of this trust shall be determined by the trustees herein.

283 And the Toledo, Delphos & Burlington Railroad Company agree to pay promptly on the day when they become due all of said equipment trust bonds not already retired, together with interest thereon.

And said Toledo, Delphos & Burlington Railroad Company reserves the right to redeem said bonds at any time after June 1st, 1885, and after said date said trustees shall not pay over par and accrued interest for said bonds.

In case of a default in the payment of said semi-annual payment or any of them or any portion of any of them on the day when the same are due and payable, and in case of default in the payment of said coupons or any portion thereof or said bonds or any portion thereof, and in case of any violation of any of the provisions of this contract by the said Toledo, Delphos and Burlington Railroad Company, the trustees herein shall have the right at their option, and at the written request of the holders of a majority of the bonds then outstanding it shall be their duty, without notice, to enter upon the premises of said railroad company and elsewhere and to remove any and all of said rolling stock, and with or without notice to sell at public or private sale the same or any portion thereof and apply the proceeds to the payment of the then outstanding bonds and coupons and interest thereon.

And in case of any such proceedings the principal of said bonds shall, at the option of the holder, forthwith become due and payable.

And if the proceeds of any such sale or sales shall exceed the expenses of said trust and the payment of said bonds and all interest thereon, then such surplus shall be paid to the Toledo, Delphos & Burlington Railroad Company; but if the proceeds of the sale

284 of said rolling stock shall not be sufficient to pay the expenses of such sale, this trust, and the principal and interest of said bonds, then the said Toledo, Delphos & Burlington Railroad Company shall forthwith on demand pay the balance.

And the said railroad company further agrees hereby to do and perform the following things, viz: To keep all of said rolling stock in good repair, and if any of the same be lost or destroyed to replace the same with other of like kind and quality; also to cause each of

said engines, cars, and trucks to be fully insured, so indorsed that the loss, if any, shall be payable to the trustees herein; to pay the premiums for such policies and file the same with such trustees; to replace any and all rolling stock destroyed or injured by fire, and thereupon the trustees shall pay over to said company all moneys received under such policies.

Also, in order that the ownership may always be known, the said railroad company shall cause to be painted in a conspicuous place and so it can be plainly read the following on each engine, car, and truck: "B. C. T., series A;" and for the purposes of this trust the said Geo. Wm. Ballou & Co. and the holders of the said bonds shall be known and called the "Boston car trust;" and also, in case said letters and words should in any way become indistinct or erased, then to cause the same to be repainted; also pay all taxes and assessments levied on said rolling stock and on any portion thereof; also pay to said trustees not to exceed one hundred dollars per annum for the expense of an agent to annually examine and report to said trustees the condition of said rolling stock; also, in case the said trustees seize the said property for any violation of the provisions of this contract by said railroad company, on demand of
285 said trustees to place all of said engines and cars and trucks upon any side track or side tracks of said railroad company that shall be designated by said trustees, and hold the same, without use or charge, subject to the order of the said trustees; and if said trustees deem it necessary, in order more advantageously to sell the same, to transport the same to some other point, then said railroad company agrees to pay the expenses of such transportation.

In case the said Geo. Wm. Ballou and F. M. Holmes should at any time be unable for any cause to perform the duties of trustees, then they shall for such time name in writing, communicated to said company, their successors; and if they should neglect or refuse to so name their successors, then the said railroad company shall name their successors and due notice thereof shall be given by publication.

And it is further agreed that in consideration of such several hereinbefore-specified bonds and sums of money and the prompt payment thereof, and the prompt payment of all of said bonds and the interest thereon, and in further consideration of the payment to said lessors or their assigns of ten cents for each car, five cents for each truck, and one dollar for each engine within thirty days after the said June 1st, 1890, that then the said rolling stock, as hereinbefore described, shall become and be the absolute property of said railroad company without further conveyance or transfer.

In witness whereof the said Geo. Wm. Ballou & Co. have hereunto set their hands and seal and the said Toledo, Delphos & Burlington Railroad Company has caused its corporate name to be hereunto signed by its president, its corporate seal to be hereunto

affixed, and attested by the signature of its secretary this 1st day of June, A. D. 1880.

[SEAL.] JNO. M. CORSE,
For the Toledo, Delphos & Burlington R. R. Company.

Attest: LOUIS CURTH, JR., *Secretary.*

286 In consideration of the premises recited in the foregoing contract we hereby assign all our rights, title, and interest in, to, and by virtue of the same to Geo. Wm. Ballou and F. M. Holmes, in trust for the holders of the bonds and coupons therein described.

Witness our hands and seal this 1st day of June, A. D. 1880.

GEO. WM. BALLOU & CO. [SEAL.]

We, Geo. Wm. Ballou and F. M. Holmes, hereby accept the trust conferred on us herein.

Witness our hands this 1st day of June, 1880.

GEO. WM. BALLOU.
F. M. HOLMES.

Above is a true copy of lease, series "A," omitting copies of bond and coupon.

WM. M. RAMSEY.

July 22, '84.

Memoranda of an agreement, series B, entered into this first day of November, A. D. 1880, by and between Messrs. Geo. Wm. Ballou & Co., of Boston, the Toledo, Delphos & Burlington Railroad Company, a corporation duly organized under the laws of the States of Ohio and Indiana, and Geo. Wm. Ballou and F. M. Holmes, trustees.

Said Geo. Wm. Ballou & Co. agree to lease to the Toledo, Delphos & Burlington Railroad Company and the Toledo, Delphos & Burlington Railroad Company agree to hire from said Geo. Wm. Ballou & Co. the following rolling stock, viz:

Six locomotives, known as T., D. & B. R. R., Nos. 18, 19, 20, 21, 22, 23, respectively.

One hundred flat cars, and known as T., D. & B. R. R., Nos. 381 to 480, both inclusive; twenty-two freight-car trucks, and
287 known as T., D. & B. R. R., Nos. 2237 to 2258, both inclusive, and seventy box cars, known as T., D. & B. R. R., numbered from 567 to 636, both inclusive.

In all other respects it is an exact copy of series A.

Memoranda of an agreement (series C) entered into this first day of November, A. D. 1880, by and between Messrs. Geo. Wm. Ballou & Co., of Boston, the Toledo, Delphos & Burlington Railroad Company, a corporation duly organized under the laws of the States of Ohio and Indiana, and Geo. Wm. Ballou and F. M. Holmes, trustees.

Said Geo. Wm. Ballou & Co. agree to lease to the Toledo, Delphos & Burlington Railroad Company and the Toledo, Delphos & Burlington Railroad Company agree to hire from said Geo. Wm. Ballou & Co. the following rolling stock, viz:

Four locomotives, known as T., D. & B. R. R., Nos. 24, 25, 26, 27, respectively.

Seven first-class passenger coaches, Nos. 8 to 14, inclusive; six excursion cars, Nos. 15 to 20, inclusive; four baggage and express cars, Nos. 4 to 7, inclusive; two combination passenger and mail cars, Nos. 8 and 9; twenty-four coal cars, Nos. 1500 to 1523, inclusive, and twenty-five box cars, known as T., D. & B. R. R., numbered from 712 to 736, both inclusive.

In all other respects it is an exact copy of series A.

288 Memoranda of an agreement (series D) entered into this first day of October, A. D. 1880, by and between Mess. Geo. Wm. Ballou & Co., of Boston, the Toledo, Delphos & Burlington Railroad Company, a corporation duly organized under the laws of the States of Ohio and Indiana, and Geo. Wm. Ballou and F. M. Holmes, trustees.

Said Geo. Wm. Ballou & Co. agree to lease to the Toledo, Delphos & Burlington Railroad Company and the Toledo, Delphos and Burlington Railroad Company agree to hire from said Geo. Wm. Ballou & Co. the following rolling stock, viz: One hundred flat cars, and known as T., D. & B. R. R., Nos. 481 to 580, both inclusive, and one hundred and seventy-five box cars, known as T., D. & B. R. R., and numbered from 737 to 911, both inclusive.

In all other respects it is an exact copy of series A.

Memoranda of an agreement (series E) entered into this first day of April, A. D. 1881, by and between Mess. Geo. Wm. Ballou & Co., of Boston, the Toledo, Delphos & Burlington Railroad Company, a corporation duly organized under the laws of the States of Ohio and Indiana, and Geo. Wm. Ballou and F. M. Holmes, trustees.

Said Geo. Wm. Ballou & Co. agree to lease to the Toledo, Delphos & Burlington Railroad Company and the Toledo, Delphos & Burlington Railroad Company agree to hire from said Geo. Wm. Ballou & Co. the following rolling stock, viz:

Six locomotives, and known as T., D. & B. R. R., Nos. 28
289 to 33, both inclusive; one hundred coal cars, known as T., D. & B. R. R., Nos. 1524 to 1623, both inclusive, and forty box cars, known as T., D. & B. R. R., Nos. 1000 to 1039, both inclusive.

In all other respects it is an exact copy of series A.

290 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States within and for the district aforesaid, do hereby certify that the above and foregoing is a full and true transcript of the record in the cause above entitled, of all the proceedings had upon the intervening petition of George William Ballou filed therein, together with all the evidence taken and filed in relation to said intervening petition, as fully as the same remains upon the records and files now in my office.

Seal Circuit Court of the United States, District of Indiana.

Witness my hand and the seal of said court, at Indianapolis, in said district, this 20th day of December, 1889.

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Indiana C. C. U. S. No. 1537. Sylvester H. Kneeland, appellant, *vs.* George William Ballou, trustee. Filed January 10, 1890.

SUPREME COURT
OF THE
UNITED STATES.

SYLVESTER H. KNEELAND,
Appellant,
vs.
THE AMERICAN LOAN AND TRUST COMPANY OF BOSTON, THE GRANT LOCOMOTIVE WORKS, D. S. PAUL, TRUSTEE, ET AL.

No. 252.
OCTOBER TERM, 1889.

AND

SYLVESTER H. KNEELAND,
Appellant,
vs.
GEORGE WILLIAM BALLOU, TRUSTEE.

No. 1537.
OCTOBER TERM, 1889.

Appeals from the Circuit Court of the United States for the District of Indiana.

BRIEF IN BEHALF OF APPELLANT.

QUESTIONS FOR DECISION.

The chief questions presented for decision by these appeals may be stated thus:

First. Are the owners of railway rolling stock and equipment,—who delivered engines and cars to an

insolvent railroad company, under written agreements named leases, but which are in fact contracts of conditional sale (the vendors to retain title until the equipment is fully paid for); and who permitted their engines and cars to remain in the possession and use of the insolvent railroad company, and its Receivers, after default in payments required by the contracts of conditional sale, without demanding possession thereof from the railroad company, or its Receivers, and without declaring any forfeiture under the contracts of conditional sale, and without making any contract with the railroad company, or its Receivers, touching the renting of said engines and cars,—entitled, in equity, to payment of rent for the use of their engines and cars by the Receivers of the insolvent railroad company, out of the proceeds of foreclosure sale of the railroad and property of the insolvent corporation, *in preference* to the application of such proceeds of sale in payment upon the first mortgage bonds, and defaulted coupons, issued and sold for value by the insolvent railroad company long before the contracts of conditional sale of engines and cars were made?

To put this question in shorter form:

Are vendors of railroad equipment, who, by contract, retain the title to the equipment as their security for payment of deferred installments of the purchase price, entitled, in addition to such security, to a first lien—superior and paramount to the lien of first mortgage bonds sold for value before the equipment contracts were made—upon the proceeds of foreclosure sale of the railroad of the corporation with which they made their contracts, for the use of their equipment, while they voluntarily, and without contract, permitted

it to remain in the possession of the insolvent railroad company, or its Receivers, after default in payments required by their contracts of conditional sale?

Second. Can proceeds of foreclosure sale of the railroad and property of a bankrupt railroad company be lawfully and equitably withheld from application in payment upon first mortgage bonds and defaulted coupons of the insolvent company, and applied to payment for the use of engines and cars by a Receiver appointed under a creditor's bill, filed by an unsecured, floating-debt creditor—the engines and cars having been voluntarily left in the possession of the Receiver by the owners thereof, who had delivered the engines and cars to the insolvent company under contracts of conditional sale, the owners having made no contract with the Receiver regarding the use of their engines and cars—when it clearly appears that the Receiver under the creditor's bill made no net earnings during his receivership, but, on the contrary, the operation of the railroad during his receivership resulted in a heavy loss and deficit?

Or, to present the same question in other words:

Can the proceeds of foreclosure sale of a railroad be lawfully withheld from the bondholders and applied to payment for the use of equipment by a Receiver appointed under a creditor's bill—the equipment having been by its owners voluntarily left in the possession of the Receiver without any contract regarding its use—when the use of the equipment, by the Receiver under the creditor's bill, added nothing to the value of the mortgaged estate, or to the proceeds of foreclosure sale, but on the contrary resulted in a heavy loss and deficit?

Third. Where owners of railway rolling stock delivered to a railroad company engines and cars under contracts of conditional sale, by which the vendors retained title until full payment of the purchase money, and also retained the right to retake possession of the equipment upon default in payment of any of the deferred installments of the purchase money:

Where, while so in possession of the equipment, the railroad company defaulted in payment of interest on its first mortgage bonds, issued and sold for value long before the owners of the rolling stock made their contracts of conditional sale, and also defaulted in payment of installments falling due under the contracts of conditional sale:

Where, after such defaults, a Receiver was appointed by the Court under foreclosure proceedings brought by first mortgage Trustees, and took possession of, and operated the railroad:

Where the owners of the rolling stock made no demand for its delivery to them, either upon the railroad company, or the Receiver, and declared no forfeiture under the contracts of conditional sale, but voluntarily left their rolling stock in the possession of the railroad company and its Receiver, without making any contract regarding its use by the Receiver:

Where it is clear beyond doubt that the railroad company not only never made any net earnings, but that it fell far short of earning enough to pay its operating expenses; and also that the Receiver never made any net earnings, but that on the contrary the operating expenses during the receivership far exceeded the total gross earnings:

And where it is perfectly evident that the use by

the Receiver of the rolling stock covered by the contracts of conditional sale, added nothing to the value of the mortgaged estate, and in no possible degree increased the fund in Court arising from the foreclosure sale of the railroad:

Have the owners of the rolling stock, under such circumstances, a lien upon the proceeds of foreclosure sale, for its use by the Receiver,—prior and superior in equity to the lien of first mortgage bonds and defaulted coupons?

The appellant contends that each of these questions ought to be answered in the negative. The Circuit Court answered them in the affirmative, by rendering decrees requiring a very large sum of money to be paid out of proceeds of foreclosure sale, for the use, by the Receivers, of engines, cars and equipment possessed and used by them under the circumstances in these questions disclosed.

Other questions, of minor importance, will no doubt be presented for consideration, but it is believed that the questions above set forth present the main points involved in these appeals.

STATEMENT OF CASE.

In the briefs in behalf of appellants in the cause of the *Toledo, Delphos and Burlington Railroad Company, et al., vs. Thomas H. Hamilton*, No. 184, present term docket, argued and submitted January 10, 1890, an outline history of the railroads and railroad corporations involved in these appeals was given. The appeals now submitted present another phase of the disastrous failure of the Narrow Gauge Railroad System of Ohio, Indiana and Illinois.

The proper presentation of these appeals requires a statement of the following facts:

I. The Toledo, Delphos and Burlington Railroad Company was created May 1, 1879, by the consolidation of four pre-existing railroad corporations.

This consolidated company, by its charter, covered a continuous line of narrow gauge railroad extending from a point in the City of Toledo, Ohio, to the City of Kokomo, Indiana, that part of said line extending from the City of Toledo, Ohio, to the village of Warren, Indiana, then being so far constructed as to be in partial operation; that part of said line extending from Warren, Indiana, to the City of Kokomo, Indiana, then being in course of construction.

II. On January 17, 1880, the Toledo, Delphos and Burlington Railroad Company executed and delivered its first mortgage to the Central Trust Company, of New York, Trustee, to secure the payment of $1,250,000 six per cent. bonds. This first mortgage was duly recorded in the several counties of Ohio and Indiana, through, or into which, the line of railroad from Toledo to Kokomo extended, prior to January 29, 1880.

The bonds secured by this first mortgage were immediately issued by the company, certified by the Trustee, and sold on the market, the proceeds of said bonds being applied to the construction and completion of said line of railroad from Toledo, Ohio, to Kokomo, Indiana.

III. Subsequent to January 17, 1880, and prior to February 25, 1882, the Toledo, Delphos and Burlington Railroad Company became, by various agreements of consolidation, and otherwise, the owner of several other lines of narrow gauge railroad in the State of Ohio,

namely, a line from Delphos to Dayton; also a line from Dayton to Wellston, and thence to Gallipolis, with a branch to Ironton; also the railroad formerly belonging to the Iron Railroad Company in Lawrence county, and also a line from Shakertown to Lebanon, with a branch from Mercer to Shanesville.

IV. Prior to July, 1881, the Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois was created by the consolidation of various pre-existing narrow gauge railroad corporations of the States of Indiana and Illinois. This consolidated company possessed, and by its charter covered, a line of railroad, constructed and in process of construction, extending from East St. Louis, Illinois, to Kokomo, Indiana.

On July 23, 1881, the Toledo, Cincinnati and St. Louis Railroad Company, of Indiana and Illinois, executed and delivered to the Central Trust Company, of New York, and Thomas A. Hendricks, Trustees, its first mortgage on its entire line of railroad and property then held and thereafter to be acquired, to secure the payment of $3,000,000 six per cent. gold bonds, interest payable semi-annually on the first days of January and July of each year, and maturing July 1, 1891.

This first mortgage was duly recorded in each county into, or through which, the line of railroad extended. The bonds secured by this first mortgage were immediately issued and sold on the market, and the proceeds thereof applied to the construction and completion of the railroad from East St. Louis, Illinois, to Kokomo, Indiana.

On February 25, 1882, the Toledo, Delphos and Burlington Railroad Company—a consolidated corporation of the States of Ohio and Indiana as above shown—and

the Toledo, Cincinnati and St. Louis Railroad Company, a consolidated corporation of the States of Illinois and Indiana, entered into an agreement of consolidation pursuant to the laws of the States of Ohio, Indiana and Illinois, whereby the capital stock of said two companies was consolidated, and all the lines of railroad then possessed by said two corporations, constructed and projected, were vested in a single consolidated company under the name of the "Toledo, Cincinnati and St. Louis Railroad Company." This last consolidation vested in the Toledo, Cincinnati and St. Louis Railroad Company a continuous line of railroad, either constructed or in process of construction, extending from Toledo, Ohio, to East St. Louis, Illinois, which line was thereafter known as the "Main Line of the Toledo, Cincinnati and St. Louis Railroad Company."

Afterwards, in the early part of 1883, the Toledo, Cincinnati and St. Louis Railroad Company entered into a further agreement of consolidation with two narrow gauge railroad corporations, known, respectively, as the "Cincinnati Northern Railway Company," and the "Spring Grove, Avondale and Cincinnati Railway Company," the first named company owning and being then engaged in constructing a line of railroad from Cincinnati, Ohio, to Waynesville, Warren county, Ohio, and the second named company being the owner of a line of railroad from a point in the City of Cincinnati, to Spring Grove Cemetery, Hamilton county, Ohio, which line had theretofore been leased to the Cincinnati Northern Railway Company.

This last consolidation completed what was known thereafter as the "Narrow Gauge Railroad System of Ohio, Indiana and Illinois."

A clear and correct history of the various consolidations resulting in the consolidated company known as the "Toledo, Cincinnati and St. Louis Railroad Company" will be found in the preliminary report of Special Master J. D. Cox.

(Rec. in Cause No. 252, pp. 190 to 195.)

V. On and prior to August 1, 1881, the following named duly recorded first mortgages were outstanding as first and prior liens upon the following named divisions of said narrow gauge railroad system then in possession of the Toledo, Cincinnati and St. Louis Railroad Company, namely:

1. First mortgage, Toledo, Delphos and Burlington Railroad Company to Central Trust Company, Trustee, dated January 17, 1880, to secure $1,250,000 of bonds, and covering all the railroad, property, rights of way, terminal facilities, real estate, and superstructures then or at any time thereafter acquired in, and extending from, the City of Toledo, Ohio, to the City of Kokomo, Indiana.

2. First mortgage, Toledo, Cincinnati and St. Louis Railroad Company to Central Trust Company and Thomas A. Hendricks, Trustees, dated July 23, 1881, to secure $3,000,000 of bonds, covering the line from Kokomo, Indiana, to East St. Louis, Illinois.

3. Terminal trust mortgage, Toledo, Delphos and Burlington Railroad Company to Central Trust Company, Trustee, dated June 21, 1880, to secure $250,000 of Series A, terminal trust first mortgage bonds, and purporting to cover and convey all of the railroad, property, real estate, and terminal facilities of the Toledo, Delphos and Burlington Railroad Company in the City of Toledo.

4. First mortgage, Toledo, Delphos and Burlington Railroad Company to Central Trust Company, Trustee, dated July 1, 1880, to secure $1,000,000 of bonds, and covering the Dayton division from Delphos to Dayton.

5. First mortgage, Toledo, Delphos and Burlington Railroad Company to Central Trust Company, Trustee, dated May 16, 1881, to secure $250,000 of bonds, and covering the Cincinnati division from Shakertown to Lebanon, Ohio.

6. First mortgage, Toledo, Delphos and Burlington Railroad Company to Central Trust Company, Trustee, dated May 16, 1881, to secure $2,250,000 of bonds, and covering the Southeastern division from Dayton to Ironton, Ohio.

7. First mortgage, Cincinnati Northern Railway Company to Central Trust Company, Trustee, dated October 1, 1880, to secure $1,000,000 of bonds, and covering the line of railroad from Waynesville to Cincinnati.

8. First mortgage, Spring Grove, Avondale and Cincinnati Railway Company to Central Trust Company, Trustee, dated May 25, 1881, to secure $1,000,000 of bonds, and covering line from Cincinnati to Spring Grove Cemetery.

9. First mortgage, Iron Railroad Company to Central Trust Company, Trustee, dated August 1, 1881, to secure $500,000 of bonds, and covering lines of railroad in Lawrence county, Ohio.

There were divers other junior mortgages on these various divisions to secure income bonds, but since the system, as a whole, never came anywhere near earning sufficient to pay operating expenses, much less interest on first mortgage bonds, it is needless to enumerate income mortgages and junior incumbrances.

These appeals now presented involve only the main line of the narrow gauge railroad extending from Toledo, Ohio, to East St. Louis, Illinois.

The mortgage indebtedness on this main line from Toledo, Ohio, to East St. Louis, Illinois, is correctly shown by the report of Master, William P. Fishback.

(Rec. in Cause No. 252, pp. 322 to 324.)

No interest was paid on the main line first mortgage bonds after July 1, 1882. On January 1, 1883, and again on July 1, 1883, default was made in the payment of interest on the First Mortgage Bonds of the Toledo, Delphos and Burlington Railroad Company secured by the first mortgage of January 17, 1880.

On the same dates defaults also occurred in the payment of interest on the first mortgage bonds of the Toledo, Cincinnati and St. Louis Railroad Company, secured by the first mortgage of July 23, 1881. Default also occurred in the payment of interest on the various other first mortgages above named.

VI. On August 1, 1883, Edward E. Dwight was appointed Receiver of this entire narrow gauge railroad system, under a creditor's bill filed on that day by Granville D. Braman against the Toledo, Cincinnati and St. Louis Railroad Company, the Toledo, Delphos and Burlington Railroad Company and others. This creditor's bill and the order appointing Dwight Receiver appear in the record.

(Rec. in Cause No. 252, pp. 2 to 16.)

Afterwards, on October 20, 1883, the Central Trust Company, Trustee, brought original independent suits in Ohio and Indiana to foreclose the various first mortgages, in which it was Trustee, resting on the various divisions in the State of Ohio, and also on the main

line from Toledo, Ohio, to Kokomo, Ind, and in said suits prayed for the appointment of a Receiver in the interest of the bondholders secured by the several mortgages in which said Central Trust Company was Trustee. Under these foreclosure suits William J. Craig was, on December 1, 1883, appointed Receiver of this entire narrow gauge railroad system by the joint orders of the Circuit Courts of the United States for the Sixth and Seventh Circuits. The bill of complaint for foreclosure of the first mortgage of January 17, 1880, on the main line from Toledo to Kokomo, and the order of the Court appointing William J. Craig Receiver appear in the record.

(Rec. in Cause No. 252, pp. 25 to 34, and 73.)

It thus appears that the receivership under the creditor's bill filed by Braman as an unsecured judgment creditor, existed and continued four months, to-wit, from August 1 to December 1, 1883.

During those four months the total gross earnings fell far short of being sufficient to pay operating expenses, and a large indebtedness was contracted under the receivership instituted under this creditor's bill. During those four months of receivership under the creditor's bill, no suit had been brought by the Trustees to foreclose the first mortgage on that part of the main line extending from Kokomo, Indiana, to East St. Louis, Illinois.

This receivership from August 1, 1883, to December 1, 1883, based upon a creditor's bill, presents one of the important questions to be considered and decided.

Appellant contends that proceeds of foreclosure sale of the mortgaged estate cannot lawfully and equitably be applied to the payment of the expenses and in-

debtedness of the receivership instituted at the instance of unsecured creditors and founded upon a creditor's bill, in preference to payment of first mortgage bonds and defaulted coupons.

A few days after his appointment, to-wit, on August 16, 1883, Receiver Dwight petitioned the Court for authority to borrow $94,000 and issue Receiver's certificates therefor which should be a first lien upon the entire railroad and property.

The court granted the petition of the Receiver, and the Central Trust Company of New York excepted to that part of the order which authorized the Receiver to borrow the money and make the same a first lien on the property. (Rec. in Cause No. 252, pp. 17 and 18.)

After William J. Craig was appointed Receiver under the foreclosure suits brought by the Central Trust Company of New York, to-wit, on June 16 and 17, 1884, Edward F. Leonard, as a bondholder, in his own right and in behalf of other bondholders represented by him, and the Central Trust Company of New York, brought separate suits for the foreclosure of the first mortgage of the Toledo, Cincinnati and St. Louis Railroad Company on that part of the main line extending from Kokomo, Indiana, to East St. Louis, Illinois, a Receiver being prayed for in the bills of complaint in both of said suits. The bills of complaint in the two foreclosure suits last named appear in the Record.

(Rec. in Cause No. 252, pp. 135 to 168.)

On July 2, 1884, an order was entered by the Court consolidating these two foreclosure suits last above named. (Rec. in Cause No. 252, p. 188.)

From the fact that the Central Trust Company of New York was Trustee in the first mortgage of the

Toledo, Delphos and Burlington Railroad Company, executed January 17, 1880, and was also Trustee in the terminal trust mortgage of the Toledo, Delphos and Burlington Railroad Company executed June 21, 1880, and purporting to cover and convey part of the same identical railway, rights of way, real estate, terminal facilities and property covered and conveyed by said first mortgage of January 17, 1880, and from the further fact that the Central Trust Company had brought suits to foreclose both of said mortgages, a direct antagonism existed between the holders of bonds under the first mortgage of January 17, 1880, and the terminal trust mortgage of June 21, 1880, in which conflict and antagonism of interest it became, and was improper, and, in fact, impossible, for the Central Trust Company to fairly represent its *cestuis que trustent* under the two antagonistic mortgages.

The bondholders under the first mortgage of January 17, 1880, executed by the Toledo, Delphos and Burlington Railroad Company, united in the appointment of a Bondholders Committee, consisting of James M. Quigley, Charles T. Harbeck and John McNab, to represent the interest of the bondholders in the foreclosure litigation.

The bondholders under the first mortgage of the Toledo, Cincinnati and St. Louis Railroad Company executed July 23, 1881, covering and conveying that part of the main line extending from Kokomo, Indiana, to East St. Louis, Illinois, also united in the appointment of a Bondholders Committee, consisting of James M. Quigley, Halsey J. Boardman and Charles W. Pierce, to represent the interests of the bondholders in said foreclosure proceedings.

On November 10, 1884, these two Bondholders Committees applied to the Court for orders making said committees co-complainants in the two foreclosure suits brought to foreclose the first mortgages on the main line extending from Toledo, Ohio, to East St. Louis, Illinois, which orders were granted by the Court. The petitions of these Bondholders Committees, and the orders of the Court admitting them as co-complainants, appear in the Record.

(Rec. in Cause No. 252, pp. 268 to 286.)

On December 5, 1884, Quigley, Harbeck and McNab, Bondholders Committee on that part of the main line extending from Toledo, Ohio, to Kokomo, Indiana, petitioned the Court for leave to file an amendment to the bill of complainant of the Central Trust Company for the foreclosure of the first mortgage of the Toledo, Delphos and Burlington Railroad Company, executed January 17, 1880, and conveying the main line of railroad from Toledo, Ohio, to Kokomo, Indiana. The petition was granted, and the Bondholders Committee filed their amendment.

(Rec. in Cause No. 252, pp. 302 to 316.)

Prior to August 1, 1884, the first mortgages on all the Ohio divisions except the main line from Toledo to Kokomo had been foreclosed, and the several divisions had been sold at foreclosure sales, leaving, on August 1, 1884, the main line from Toledo, Ohio, to East St. Louis, Illinois, the only portion of the entire system remaining unsold, and in possession of the Receiver. This statement is necessary to enable this Court to understand the necessity of dividing the receivership under the foreclosure suits into separate and distinct periods in computing and distributing the receivership indebtedness.

Under the power given to Messrs. Quigley, Harbeck, McNab, Boardman and Pierce, as Trustees and Committees for main line bondholders, by the trust agreement under which they became representatives of the bondholders, they entered into an agreement with appellant, Sylvester H. Kneeland, under which Kneeland agreed to purchase in the entire main line from Toledo, Ohio, to East St. Louis, Illinois, at the foreclosure sales, if the same could be purchased at an agreed sum, organize new companies, in the different States, to take the property, consolidate these companies into one corporation, holding the entire line, and to broaden the gauge from narrow to standard gauge, and reconstruct and equip the entire line as a standard gauge railroad. By this agreement Kneeland became Trustee, representing the first mortgage bondholders on the entire line from Toledo, Ohio, to East St. Louis, Illinois, as well as purchaser at the foreclosure sales.

On November 12, 1885, foreclosure decrees and orders of sale were entered in the two suits covering the main line from Toledo, Ohio, to East St. Louis, Illinois.

(Rec. in Cause No. 252, pp. 461 to 482.)

In each of these decrees the right was expressly reserved to the purchaser to except to, and appeal from, any orders and final decrees made by the Court directing and decreeing the payment, out of proceeds of foreclosure sale, of claims and debts adjudged and decreed to be due, and payable as Court and Receivers indebtedness, and to be prior, and superior in equity to the lien of the first mortgages by said decrees foreclosed.

(Rec. in Cause No. 252, pp. 470 and 481.)

The entire line of railroad from Toledo, Ohio, to East St. Louis, Illinois, was sold under said decrees by

William P. Fishback and John McNulta, Special Masters, on December 30, 1885, Sylvester H. Kneeland being the purchaser of the entire line sold under said two decrees. On February 5, 1886, the foreclosure sales of the two divisions of the main line were confirmed by the Court, and the Special Masters were ordered to execute deeds conveying said two divisions of the main line to the purchaser, Sylvester H. Kneeland.

(Rec. in Cause 252, pp. 533, 534.)

On March 10, 1886, the Special Masters reported to the Court their deed conveying the entire main line from Toledo, Ohio, to East St. Louis, Illinois, to Sylvester H. Kneeland, the purchaser thereof.

The Court confirmed the deed and directed the Receiver to deliver immediate possession of the entire main line, and all property connected therewith, and belonging thereto, to the purchaser, Sylvester H. Kneeland, or his representative.

(Rec. in Cause No. 252, pp. 554, 555.)

VII. It will now be necessary to go back and bring up another branch of the history of this most unfortunate enterprise.

In December, 1881, only two months before the consolidation of the Toledo, Delphos and Burlington Railroad Company, and the Toledo, Cincinnati and St. Louis Railroad Company, which occurred February 25, 1882, the Toledo, Delphos and Burlington Railroad Company, then owning some considerable equipment, entered into certain contracts, named leases, but which were in fact contracts of conditional purchase, under which certain rolling stock and equipment was delivered to the Toledo, Delphos and Burlington Railroad Company. After the consolidation of the Toledo, Del-

phos and Burlington Railroad Company, and the Toledo, Cincinnati and St. Louis Railroad Company, various other like contracts were entered into whereby the consolidated Toledo, Cincinnati and St. Louis Railroad Company obtained possession of a large amount of rolling stock and equipment.

Prior to the consolidation in 1883, by which the Toledo, Cincinnati and St. Louis Railroad Company became possessed of the Cincinnati Northern Railway Company, that company had entered into a like contract, under which it had obtained possession of certain equipment. These various contracts were entered into by and between the Toledo, Delphos and Burlington Railroad Company, the Toledo, Cincinnati and St. Louis Railroad Company and the Cincinnati Northern Railway Company with the various appellees in the causes now under consideration.

The exact contracts under which this rolling stock and equipment was obtained, are not all set out in full in the record in connection with the intervening petitions of the several appellees, but, in several instances, the contracts in full are set forth as exhibits with the intervening petitions. All of the contracts were substantially in the same form, and were in effect the same as exhibits "A" and "B" set forth in connection with the intervening petitions of the United States Rolling Stock Company, one of the appellees.

(Rec. in Cause No. 252, pp. 49 to 64.)

The following is a brief statement of these transactions with regard to equipment with the various appellees.

1. The American Loan and Trust Company. The equipment represented by this appellee, and covered by

contracts of conditional sale, is itemized and described in the intervening petition of said appellee. This equipment was delivered to the Toledo, Cincinnati and St. Louis Railroad Company in the latter part of the year 1882. The exact date is not stated.

No demand for the possession of this equipment was ever made on the Railroad Company, or on the Receiver. No intervening petition concerning this equipment was filed by the American Loan and Trust Company until June 27, 1884, nearly a year after the Receiver was appointed. On June 27, 1884, the American Loan and Trust Company filed its intervening petition in the creditor's suit brought by Braman.

(Rec. in Cause No. 252, pp. 182 to 186.)

Afterwards, on December 1, 1884, the same intervening petition, in substance, was filed by the American Loan and Trust Company in the foreclosure suit brought to foreclose the first mortgage of the Toledo, Cincinnati and St. Louis Railroad Company on that part of the main line extending from Kokomo, Indiana, to East St. Louis, Illinois.

(Rec. in Cause No. 252, pp. 296 to 300.)

No intervening petition was ever filed by the American Loan and Trust Company in the foreclosure suit brought to foreclose the first mortgage of the Toledo, Delphos and Burlington Railroad Company on that part of the main line extending from Toledo, Ohio, to Kokomo, Indiana.

On December 1, 1884, the American Loan and Trust Company petitioned the Court for the delivery of certain cars, in said petition described. The Court immediately granted said petition, and ordered said equipment in said petition described to be delivered to said

petitioner within five days from and after the date of the order.

(Rec. in Cause No. 252, pp. 292, 293.)

2. E. B. PHILLIPS, TRUSTEE. The equipment represented by this appellee is itemized and described in his intervening petition. This contract was made with the Cincinnati Northern Railway Company in March, 1883. On May 5, 1883, the Toledo, Cincinnati and St. Louis Railroad Company, the Cincinnati Northern Railway Company and the Spring Grove, Avondale and Cincinnati Railway Company consolidated under the name of the Toledo, Cincinnati and St. Louis Railroad Company. On or about July 17, 1883, the equipment represented by Phillips, Trustee, was delivered to the Toledo, Cincinnati and St. Louis Railroad Company under the contract of conditional sale entered into with the Cincinnati Northern Railway Company prior to said consolidation. In less than twenty days after the delivery of this equipment, to-wit: August 1, 1883, the Receiver was appointed under the creditor's bill as herein before stated. No demand whatever for the redelivery of the equipment represented by Phillips, Trustee, was ever made on the Railroad Company, or on the Receiver. No intervening petition regarding said equipment was filed in Court until June 27, 1884, at which date Phillips, as Trustee, filed his intervening petition in the creditor's suit brought by Braman.

(Rec. in Cause No. 252, pp. 186 to 188.)

Afterwards, on December 1, 1884, the same intervening petition, in substance, was filed by Phillips, Trustee, in the foreclosure suit brought to foreclose the first mortgage on that part of the main line extending from Kokomo, Indiana, to East St. Louis, Illinois.

(Rec. in Cause No. 252, pp. 295 to 296.)

No intervening petition was ever filed by Phillips, Trustee, in the foreclosure suit brought to foreclosure the first mortgage of the Toledo, Delphos and Burlington Railroad Company on that part of the main line extending from Toledo, Ohio, to Kokomo, Indiana.

On December 1, 1884, Phillips, Trustee, filed his petition for an order of Court directing the Receiver to surrender two certain locomotives, which order the Court on the same day entered, ordering the Receiver to deliver said two locomotives within five days thereafter.

(Rec. in Cause No. 252, p. 294.)

3. DAVID B. PAUL, TRUSTEE. The equipment represented by this appellee is itemized and described in his intervening petition. This intervening petition was filed December 8, 1883, in the creditor's suit brought by Braman. This intervening petition shows clearly that, although called leases, the contracts were contracts of conditional sale, under which the entire purchase price of the equipment was to be paid within four years.

Instead of asking a redelivery of the equipment, or declaring forfeitures under the contracts, Paul, Trustee, by his intervening petition, prays the Court to require the Receiver to specifically perform the contracts of conditional sale.

(Rec. in Cause No. 252, pp. 75 to 82.)

This same intervening petition, or a copy thereof, was filed on March 13, 1884, in the suit brought by the Central Trust Company to foreclose the first mortgage on that part of the main line extending from Toledo, Ohio, to Kokomo, Indiana.

(Rec. in Cause No. 252, pp. 105 to 112.)

This same intervening petition, or a copy thereof, was filed on June 17, 1885, in the suit brought to fore-

close the first mortgage of the Toledo, Cincinnati and St. Louis Railroad Company on that part of the main line extending from Kokomo, Indiana, to East St. Louis, Illinois.

(Rec. in Cause No. 252, pp. 410 to 418.)

The equipment represented by Paul, Trustee, and described in these intervening petitions above named, was delivered to the railroad company, part of it in the year 1882, and part of it in the first half of the year 1883. No demand was ever made by Paul, Trustee, for the redelivery of this equipment.

By express order of Court, entered December 1, 1884, at the instance and request of the Bondholders Committees, co-complainants in the foreclosure suits on the main line, all of these appellees were required to accept possession of their equipment and remove it from the railroad on, or before, January 1, 1885.

After January 1, 1885, a part of the equipment represented by Paul, Trustee, was leased from said Trustee by Receiver Craig under express authority granted by the Court, but all rent under said lease by the Receiver has been fully paid.

These appeals involve only claims alleged to have accrued for rent of equipment prior to January 1, 1885.

4. The United States Rolling Stock Company. The equipment represented by this appellee is itemized and described in the two intervening petitions filed by said appellee on November 5, 1883.

These intervening petitions were filed in the suit brought by Braman as an unsecured creditor.

(Rec. in Cause No. 252, pp. 35 to 64.)

Copies of the contracts of conditional sale, called leases, are made exhibits with these intervening petitions.

These contracts show conclusively that the entire purcease price of the equipment was to be paid within the periods named in the contracts, under the guise of alleged rent. It would be absurd to suppose that a railroad company contracted to pay $120,000 for the mere rent of two hundred and fifty box cars for four years. Yet the contract set forth as "Exhibit A" with this appellee's first intervening petition, requires the railroad company to pay $120,000 for two hundred and fifty box cars within four years, and, in addition thereto, to pay interest semi-annually at the rate of six per cent. on the deferred payments. The date of this "Exhibit A" is erroneously printed. It should be July 10, 1882, instead of July 10, 1887.

(Rec. in Cause No. 252, p. 37.)

The equipment described in these intervening petitions was delivered to the railroad company between December 1, 1881, and August, 1882.

No demand for its delivery was made, no forfeiture under the contracts of conditional sale was declared, no step whatever was taken by this appellee regarding these contracts until November 5, 1883, and even then instead of making demand for the redelivery of the equipment and declaring forfeiture under the contracts, the United States Rolling Stock Company, in its intervening petitions prays for specific performance of the contracts of conditional sale.

(Rec. in Cause No. 252, pp. 37 and 49.)

On March 13, 1884, the United States Rolling Stock Company filed in the suit brought to foreclose the first mortgage on that part of the main line extending from Toledo, Ohio, to Kokomo Indiana, its single intervening petition embodying the substance of both of its inter-

vening petitions filed in the Braman suit on November 5, 1883, as above stated.

In this petition this appellee again prays for specific preformance of the contracts of conditional sale.

(Rec. in Cause No. 252, pp. 112 to 124.)

On June 17, 1885, the United States Rolling Stock Company filed in the suit brought to foreclose the first mortgage of the Toledo, Cincinnati and St. Louis Railroad Company on that part of the main line extending from Kokomo, Indiana, to East St. Louis, Illinois, an exact copy of the intervening petition filed March 13, 1884, as above stated, and again in the prayer of said intervening petition prayed the Court for a decree requiring the Receiver to specifically perform the contracts of conditional sale.

(Rec. in Cause No. 252, pp. 418 to 429.)

5. The Grant Locomotive Works, R. S. Grant and the American Loan and Trust Company. On October 23, 1884, these appellees filed two intervening petitions in the suit brought by the Central Trust Company to foreclose the first mortgage of the Toledo, Delphos and Burlington Railroad Company on that part of the main line extending from Toledo, Ohio, to Kokomo, Indiana, and on the same day filed copies of said two intervening petitions in the suit brought to foreclose the first mortgage of the Toledo, Cincinnati and St. Louis Railroad Company on that part of the main line extending from Kokomo, Indiana, to East St. Louis, Illinois.

These intervening petitions involve ten locomotives delivered to the Cincinnati Northern Railway Company March 24, 1883,—only a few weeks before that company consolidated with the Toledo, Cincinnati and St. Louis Railroad Company; and ten locomotives

delivered to the Toledo, Cincinnati and St. Louis Railroad Company in the latter part of the year 1882.

(Rec. in Cause No. 252, pp. 262 to 267.)

These intervening petitions purport to make copies of the contracts of conditional sale, called leases, exhibits as parts of the petitions. They do not appear in the Record. These contracts, were, however, exhibited to the Court at the hearing had December 1, 1884, and were considered and passed upon by the Court,—the Circuit and District Judges sitting together.

These contracts were the same in substance, and in general form and tenor as the contracts covering the other equipment herein above mentioned.

The entire purchase price of the locomotives was to be paid within the periods named in the contracts, together with semi-annual interest on the deferred installments of the purchase price, and the vendor—called lessor—was to retain title until final payment was made.

6. Pennock Brothers. On June 21, 1884, these appellees filed their intervening petition in the suit brought by Braman as unsecured creditor of the railroad company.

This intervening petition covers ninety freight cars for which the railroad company was to pay $43,000 within four years, together with six per cent. interest, payable semi-annually, on the deferred installments.

For the various installments of the purchase money, forty-three bonds, of $1,000 each, were issued by the railroad company. The petition avers that two of these bonds were, at the time the petition was filed, owned by S. M. Carpenter and that the remaining forty-one bonds were owned and held by Pennock Brothers.

This equipment was delivered to the railroad company during, or subsequent to, August, 1882.

(Rec. in Cause No. 252, pp. 169 to 173.)

On the same day—June 21, 1884—Pennock Brothers filed a like intervening petition in the suit brought by the Central Trust Company to foreclose the first mortgage of the Toledo, Delphos and Burlington Railroad Company on that part of the main line extending from Toledo, Ohio, to Kokomo, Indiana.

(Rec. in Cause No. 252, pp. 174 to 178.)

On June 17, 1885, Pennock Brothers filed a like intervening petition in the suit brought to foreclose the first mortgage of the Toledo, Cincinnati and St. Louis Railroad Company on that part of the main line extending from Kokomo, Indiana, to East St. Louis, Illinois. This petition is the same as the two petitions above mentioned except that it states that at the date it was filed Pennock Brothers held and owned forty of the forty-three $1,000 bonds: S. M. Carpenter owned one of said bonds, and the Lake Erie Iron Company owned two of said bonds.

(Rec. in Cause No. 252, pp. 429 to 434.)

No demand for redelivery of this equipment is made in either of these intervening petitions. The prayer of each of these petitions is for specific performance of the contracts of conditional sale.

(Rec. in Cause No. 252, pp. 173, 178, 434.)

This closes the statement of the claims involved in Cause No. 252, *Kneeland* v. *American Loan and Trust Company, et al.*

The six claims of appellees above described as allowed against the main line extending from Toledo, Ohio, to East St. Louis, Illinois,—the line purchased by

appellant Kneeland,—by the final decree appealed from, amount, in the aggregate, to $158,708.89.

There is one other claim of like character which is presented and submitted in connection with the appeal in Cause No. 252, the two appeals presenting precisely the same general questions.

7. STATEMENT OF CASE IN CAUSE OF SYLVESTER H. KNEELAND, APPELLANT, VS. GEORGE WILLIAM BALLOU, TRUSTEE, No. 1537, PRESENT TERM DOCKET.

The record in this appeal presents a single claim, or a series of claims, represented by a single Trustee, for the alleged use, by the Receivers, of equipment delivered into the possession of the railroad company by the owners of the equipment, under the same kind of contracts, called leases—but which appellant contends are contracts of conditional sale—as those herein above mentioned and described.

Every statement herein above made with reference to the claims for rent of equipment set forth in the record in Cause No. 252, and every statement of fact regarding the general condition of the railroad and property prior to, and during, the receiverships, drawn from the record in Cause No. 252, is equally applicable to the claim and appeal presented by the record in Cause No. 1537.

The fact that two records and two appeals are here presented arises from the fact that at the time the final decree was rendered in Cause No. 252—April 5, 1886—the claim of Ballou, Trustee, as set forth in the record in Cause No. 1537, had not been presented to, or adjudicated by, the Circuit Court.

George William Ballou, Trustee, filed his intervening petition in the Circuit Court on January 7, 1886.

This petition sets forth the substance of five different contracts, designated respectively: "Boston Car Trust, Series A, B, C, D and E," said contracts covering a large amount of equipment of various kinds. The petition shows on its face that the contracts, although called leases, were in fact contracts of conditional sale.

(Rec. in Cause No. 1537, pp. 1 to 21.)

The character and amount of the equipment involved in this intervening petition is shown by "Schedule A" of the report of W. P. Fishback, Master.

(Rec. in Cause No. 1537, p. 25.)

This intervening petition purports to make copies of the five contracts exhibits as parts of the petition. These copies of the contracts have, by mistake, been omitted, and do not appear in the record in connection with the petition, but a copy of one of said contracts is set out in the record in another connection, followed by a statement that each of the other contracts is the same in substance and legal effect as the one set out in the record.

This copy of contract appearing in the record shows that the contracts called leases, were in fact, and were by the parties intended to be, contracts of conditional sale without any shadow of doubt.

(Rec. in Cause No. 1537, pp. 203 to 208.)

There is no pretence that any demand was ever made by Ballou, Trustee, upon the railroad company, or upon either of the Receivers, for the redelivery or surrender of the equipment described in his intervening petition, or any part thereof. No such demand was ever made. Neither is it claimed that Ballou, Trustee, ever made, or attempted to make, any contract whatever. with the Receivers, or with the Court, regarding the use

by the Receivers of the equipment for which he was Trustee. Although default was made by the railroad company in the payments required by the contracts of conditional sale, before any Receiver was appointed, Ballou, Trustee, declared no forfeiture under the contracts, made no demand for the surrender of the equipment, made no contract for its use by the Receivers, but simply left it in the possession of the railroad company and its Receivers, until compelled by the decree of Court of December 1, 1884, to accept possession of the equipment, and remove it from the railroad. Over one year after Ballou, Trustee, was required by the Court to accept, and remove the equipment, he filed his intervening petition above described and cited.

After evidence was taken, the Master, on December 21, 1888, filed his report, allowing to Ballou, Trustee, for rent of, and repairs to, the equipment described in his intervening petition, during the receiverships, the sum of $59,753.76. The Master's report is set out in full in the record.

(Rec. in Cause No. 1537, pp. 22 to 30.)

The Court will observe that in this report as well as in the reports set out in the record of Cause No. 252, the Master divides his computations into three periods of time, viz.: 1. August 1, 1883, to December 1, 1883. This was the period during which E. E. Dwight was Receiver under the creditor's suit brought by Braman. 2. December 1, 1883 to August 1, 1884. This was the period during which W. J. Craig was Receiver of the *entire system* of railroad belonging to the Toledo, Cincinnati and St. Louis Railroad Company,—including the various branches and divisions in Ohio, extending southward from Delphos. These Ohio divisions were sold at

foreclosure sales, and delivered to the various purchasers in the last days of July, 1884. So that after August 1, 1884, the Receiver only retained possession of the main line extending from Toledo, Ohio, to East St. Louis, Illinois. 3. August 1, 1884, to January 1, 1885. During this period the Receiver possessed and operated the main line *only*. On January 1, 1885, all of the equipment held by the Receiver under the various contracts of these appellees with the railroad company, as hereinbefore stated, was delivered to the owners thereof, under and pursuant to the decree of the Court, entered December 1, 1884. Hence there are no claims by any of these appellees for use of their equipment *subsequent to January 1, 1885.*

This statement is made for the purpose of explaining the necessity that existed for dividing the computations into three separate and distinct periods of time.

In order to understand the nomenclature used by the Master in his reports set forth in the records of these appeals, it is necessary to know that the three divisions called by the Master, "Toledo Terminal Division," "Toledo Division" and "St. Louis Division," taken together, constituted the main line from Toledo, Ohio to East St. Louis, Illinois. These three names are used by the Master simply because they designate the mortgages resting on the separate portions of the main line.

The length of the main line from Toledo, Ohio to East St. Louis, Illinois is four hundred and forty-nine and seven-tenths miles. The mileage of the *entire system* was seven hundred and eighty-three and five-tenths miles. The length of each division is given seperately by Receiver Craig in his testimony.

(Rec. in Cause No. 1537, p. 179.)

Appellant Kneeland filed exceptions to the Master's report in favor of Ballou, Trustee.

(Rec. in Cause No. 1537 pp. 30 to 33.)

On the same day—November 9, 1889—the Circuit Court overruled the exceptions and rendered a decree in favor of Ballou, Trustee, for the sum of $59,753.76, and that the same be paid out of the proceeds of foreclosure sale of the main line of the Toledo, Cincinnati and St. Louis Railroad, as a lien upon said proceeds of foreclosure sale prior and paramount to the lien of the first mortgage bonds secured by the first mortgages upon said main line. This decree contains a stipulation closely uniting, if not actually consolidating, the record of this appeal with the record in Cause No. 252. From this decree Kneeland perfected this appeal.

(Rec. in Cause No, 1537, pp. 33 to 37.)

The evidence in the record of this appeal is quite valuable in two particulars. Appellant Kneeland has always contended that, if any compensation whatever should be paid for the use of the equipment left in the possession of the Receivers by the appellees in the two appeals here presented, such compensation ought to be computed, and based, upon the *actual mileage* made by the equipment in operation. This is, and long has been, almost, if not quite, the universal method of adjusting compensation for the use of railroad equipment. In his exceptions to the Master's report, Kneeland by his solicitors, pressed this very just basis of compensation upon the attention of the Circuit Court, at the same time contending that no compensation whatever ought to be paid for the use of this equipment out of the proceeds of foreclosure sale in preference to first mortgage bonds.

(Rec. in Cause No. 1537, pp. 31 and 32.)

The evidence clearly proves that if this decree had been based upon *actual mileage earnings of the equipment at then current rates* the allowances made for the use of this equipment would not have exceeded *one-fourth* of the amount decreed to be paid to appellees by the final decrees in these two appeals. A careful examination of the tables of mileage in the testimony in this appeal will clearly demonstrate that the average mileage of the freight cars was only about five miles per day—perhaps less than that.

(Rec. in Cause No. 1537, pp. 128 to 134.)

The justice of this method of adjusting the compensation to be paid—if any compensation ought to be paid, which we deny—and the injustice of the method adopted by the Circuit Court will appear on a moment's consideration of the circumstances.

Here was a bankrupt railroad that never earned operating expenses for a day during its entire history. It was a narrow gauge railroad. Narrow gauge railroads were scarce and rapidly becoming scarcer by failures and bankruptcies. The owners of narrow gauge equipment carefully sought out this Narrow Gauge Railroad System of Ohio, Indiana and Illinois, and unloaded their narrow gauge equipment on it under contracts of conditional sale. They knew this railroad had resting upon it mortgage bonds to the amount of from three to five times its full value. Therfore, they, to secure themselves, retained the title to the equipment, with the right to declare the contracts forfeited and retake possession, upon any default by the railroad company under the contracts. The railroad company defaulted, they did not retake possession of their equipment. A Receiver was appointed under a creditor's bill,

still they did not retake possession of their equipment. Foreclosure suits were brought to foreclose the mortgages on the railroad, and a Receiver was appointed on behalf of the mortgage Trustees, still they did not demand, or retake possession of, their equipment, or declare any forfeiture under the contracts, or seek to make any contract with the Court or the Receivers regarding its use, but left it in possession of the bankrupt railroad company and its Receivers, until they were compelled by the order of the Court to take it away. Now they come before the Court to ask to be paid out of proceeds of foreclosure sale, in preference to first mortgage bonds, rental for their equipment computed on *rents by the month* on each piece of equipment whether that piece of equipment earned, or failed to earn, anything during the month.

We contend earnestly on behalf of this appellant, that if this Court shall be of the opinion that any compensation whatever ought under such circumstances to be paid for the use of this equipment, that such compensation ought to be based upon the *actual mileage earnings* of the equipment. In other words, if the equipment earned nothing during a month or day, its owners ought not to receive any compensation for that month or day. There can be no possible justice or equity in taking money out of the proceeds of foreclosure sale and applying it to payment for the use of equipment that has been conclusively proved not to have earned a penny for the mortgaged estate, and never added a cent to the fund arising from the foreclosure sale.

Again, the lengthy statement of Receiver Craig, made part of the testimony in this appeal, is valuable

in that it clearly shows not only that there was no diversions of earnings to the benefit of bondholders during the receiverships, but that the Receivers fell far short each day of making earnings sufficient or anything like sufficient to pay current operating expenses, without including any rentals for the equipment represented by the appellees in these two appeals.

(Rec. in Cause No. 1537, pp. 179 to 203.)

This closes the statement of the case deemed necessary in the cause of *Kneeland, Appellant* v. *Ballou, Trustee*, No. 1537, present term docket.

Asking the Court to consider the record of this appeal in connection with the record in Cause No. 252, the attention of the Court is again called to further statements of fact drawn from the record of the last above mentioned appeal.

VIII. As has already been stated, Bondholders Committees representing the bondholders holding bonds secured by the two mortgages on the main line extending from Toledo, Ohio, to East St. Louis, Illinois—which is the line of railroad purchased by appellant Kneeland—were admitted as co-complainants with the Trustees, by orders entered in the two foreclosure suits, on November 10, 1884.

On November 28, 1884, these Bondholders Committees, by their Solicitors, filed their petition, in and by which petition they showed the Court that the mortgaged estate then being operated by the Receiver was being rapidly wrecked, and that the Receiver was incurring an average indebtedness of from $500 to $1,000 per day over and above the entire gross earnings of the receivership. They further showed that the Receiver was using the equipment obtained by the railroad com-

pany under the contracts of conditional sale herein above described, without any contracts whatever with the owners of said equipment, and insisted that the Receiver ought not to be permitted to use any equipment not owned by the railroad company, unless he could rent the same upon a *mileage basis*, which would insure the Receiver against loss, he only paying for the use of the equipment a portion of what it earned.

They further showed the Court that the Receiver admitted that it was impossible for him to make gross earnings sufficient to pay operating expenses, without including any rent or compensation for the use of the equipment not owned by the railroad company.

In view of these facts they urgently prayed the Court to order the Receiver to immediately surrender all rolling stock and equipment not owned by the railroad company, to the proper owners thereof, and to notify said owners to remove their equipment from the railroad at once, and that the Receiver be ordered to stop operating the railroad except in so far, and to such extent, as it could be operated with the rolling stock and equipment owned by the railroad company. This petition in full is in the record.

(Rec. in Cause No. 252, pp. 287 to 292.)

On December 1, 1884—two days after the Bondholders Committee filed their petition last above mentioned—a full hearing was had upon that petition, and also upon the intervening petitions of these several appellees, before the Circuit and District Judges sitting together. After full investigation and argument the Court entered an interlocutory decree finding and decreeing:

"1. That the several contracts under which the

said intervening petitioners and other holders of car-trust leases delivered the certain engines, cars, and equipment mentioned and set forth in their several intervening petitions, and in their several exceptions to said Master's report, and in the testimony taken before said Master, were, and are contracts of conditional purchase and sale of said engines, cars and equipment.

"2. That no such demand has been made by said intervening petitioners and other holders of car-trust leases, or any or either of them, to retake possession of their said engines, cars and equipment, and no such refusal to grant possession thereof has been made by the Court or its Receiver as to work a conversion of said engines, cars or equipment, or any part thereof, and that there is no legal or equitable obligation resting upon the Court and its Receiver to specifically perform and comply with the terms and obligations of said contracts of conditional purchase and sale.

"3. That said intervening petitioners and other holders of car-trust leases, and each of them are entitled to the immediate possession of their said engines, cars and equipment.

"It is therefore ordered and decreed by the Court that the said Receiver do, on or before the first day of January, A. D. 1885, surrender and deliver to the said several intervening petitioners, and to such other holders of car-trust leases, or on their order, at such point or points on the line of the railroad now in the possession of said Receiver as they shall severally select, all locomotives, tenders, cars and equipment, known by said Receiver to belong to, and to be the property of, said intervening petitioners and such other holders of car-trust leases, the said Receiver giving to them due notice of

his readiness to surrender and deliver possession of said locomotives, tenders, cars and equipment."

(Rec. in Cause No. 252, p. 301.)

Prior to this hearing, to-wit: On July 17, 1884, J. D. Cox, Special Master, filed his preliminary report in the United States Circuit Court at Cincinnati, Ohio, and some time afterwards a copy of his report was filed in the United States Circuit Court for the District of Indiana, as of the same date the original report was filed in the Court at Cincinnati. In this report Governor Cox carefully considered, dissected and passed upon the equipment contracts of said appellees, and held "said contracts to be, in fact and in law, *conditional sales* of said rolling stock."

(Rec. in Cause No. 252, p. 209.)

In this same report the Master shows that there was equipment enough belonging to the main line to keep it in operation, at least to the extent of running one or two trains each way each day.

(Rec. in Cause No. 252, pp. 205 to 208.)

Since it had then been demonstrated that the Receiver could not make the road earn operating expenses, the Bondholders Committees urgently asked the Court to limit the operation of the main line to the use of the equipment owned by the railroad company.

Under the interlocutory decree of December 1, 1884, the equipment belonging to these appellees was surrendered to them, *on January 1, 1885.*

The Receiver—as is usual with Receivers—complained that after delivering to these appellees all of their equipment, he would not have enough equipment, in serviceable condition, to continue the operation of the road as he thought it ought to be operated. Another

hearing was had, and the Bondholders Committees, by their Solicitors, obtained an order of Court requiring the Receiver to forthwith withdraw from said railroad all trains except one mixed train for freight and passengers each way each day—Sundays excepted, in the discretion of the Receiver—and authorizing the Receiver to lease such equipment, in addition to the equipment owned by the railroad company, as might be necessary for the operation of such trains only. Before entering into any contracts for the use of equipment the Receiver was required to submit the proposed leases to the Court for approval.

The Receiver was by the order further required to immediately discharge all employees not absolutely necessary for the operation of the road thus limited.

(Rec. in Cause No. 252, pp. 321, 322.)

It thus appears that from the moment they were admitted as co-complainants the Bondholders Committees did all in their power to stop the loss so rapidly accumulating by reason of the failure of the road to earn operating expenses—without including any equipment rental. Under this order last above stated some equipment was leased, but the rent for all leased equipment used by the Receiver after January 1, 1885, has been fully paid, and is not involved in these appeals.

On January 13, 1885, Receiver Craig reported to the Court that he had, under said order, last above cited, discharged 16 engineers, 21 firemen, 56 mechanics, 1 roadmaster, 108 section men, 47 train men, 8 yard men, 9 telegraph operators and 27 station agents, making a total of 293 employees discharged during the month of December, 1884, under said order. In addition to this number the Receiver further reported that he had dis-

continued paying salaries to sixty-one station agents, said agents agreeing to receive ten per cent. of ticket sales as compensation for their services in attending to all duties as station agents.

(Rec. in Cause No. 252, p. 358, 359.)

On June 18, 1885, the Court entered an order by which a high monthly rental was fixed for each class of equipment, and the whole matter of equipment rental and repairs was referred to William P. Fishback, Master in Chancery.

(Rec. in Cause No. 252, pp. 434 to 437.)

By this same order of June 18, 1885, the Court also fixed the method of distribution of receivership indebtedness among the various divisions of the Toledo, Cincinnati and St. Louis Railroad.

(Rec. in Cause No. 252, p. 436.)

On December 7, 1885, Master Fishback filed his first report on the intervening petitions of these appellees for rent of, and repairs to, their equipment.

(Rec. in Cause No. 252, pp. 488 to 500.)

To this report the Bondholders Committee filed exceptions on December 15, 1885.

(Rec. in Cause No. 252, pp. 501, 502.)

After the Bondholders Committees filed their exceptions, and before any hearing thereon, to-wit: on December 28, 1885, Master Fishback filed an amended report correcting some of the errors of his first report.

(Rec. in Cause No. 252, pp. 506 to 509.)

On the same day the Bondholders Committees refiled their exceptions to the report as amended.

(Rec. in Cause No. 252, p. 509.)

These appellees also filed exceptions to these reports of Master Fishback touching equipment rental and repairs, which exceptions appear in the record.

On February 8, 1886, the Court—the Circuit and District Judges sitting together—heard the various exceptions to Master Fishback's reports, and sustained part of the exceptions of the Bondholders Committees. Just before this hearing on the exceptions, appellant Kneeland, as purchaser, and the Bondholders Committees moved the Court to refer said reports back to the Master with leave to take additional testimony. This motion was overruled, and Kneeland and the Bondholders Committees excepted. In ruling on this motion the Court lowered the schedule of rents fixed by the order of June 18, 1885, fifteen per cent.

(Rec. in Cause No. 252, pp. 535, 536.)

On February 23, 1886, Master Fishback filed his final report on equipment rental and repairs, having modified his former reports in obedience to the order of the Court entered February 8, 1886, last above cited.

(Rec. in Cause No. 252, pp. 538 to 552.)

On February 26, 1886, the Bondholders Committees and Kneeland, as purchaser, filed exceptions to this final report of Master Fishback.

(Rec. in Cause No. 252, pp. 552 to 554.)

These several appellees also filed exceptions to the final report of Master Fishback, which exceptions appear in the record.

On April 5, 1886, the Court heard and overruled all exceptions to Master Fishback's final report, and rendered final decree in favor of these several appellees, the total amount aggregating $158,708.89, and decreed that this amount be paid out of the proceeds of foreclosure sale, in preference to payment of the bonds secured by the mortgages under which the foreclosure sales were made.

Sylvester H. Kneeland as purchaser and Trustee, representing the first mortgage bondholders excepted to, and prayed and appealed from, this decree, which was granted upon his giving supersedeas bond in the sum of two hundred thousand dollars ($200,000).

(Rec. in Cause No. 252, pp. 570 to 572.)

Appellant Kneeland gave the required bond, perfected his appeal, and now presents the same to this Court for decision.

(Rec. in Cause No. 252, pp. 1058, 1059.)

By the decrees in these two appeals, it is decreed that two hundred and eighteen thousand, four hundred and sixty two dollars and sixty-five cents ($218,462.65) shall be taken out of the proceeds of foreclosure sale of the main line of the Toledo, Cincinnati and St. Louis Railroad extending from Toledo, Ohio to East St. Louis, Illinois, and paid to these appellees for the use of, and repairs to, their equipment, in preference to payment of first mortgage bonds. This large sum of money is so decreed to be paid to appellees in face of the fact that the use of this equipment never added a dollar to the value of the mortgaged estate, or increased the proceeds of foreclosure sale by so much as a penny.

Amount decreed by final decree in Cause No. 252, one hundred and fifty eight thousand, seven hundred and eight dollars and eighty nine cents, ($158,708.89.)

(Rec. in Cause No. 252, p. 571.)

Amount decreed by final decree in Cause No. 1537, fifty nine thousand, seven hundred and fifty-three dollars and seventy-six cents, ($59,753.76.)

(Rec. in Cause No. 1537, pp. 33, 34.)

IX. It is a fact demonstrated beyond possible doubt by the records in these two appeals, that no earn-

ings of this railroad were diverted to the benefit of the first mortgage bondholders either prior to or during the receiverships.

It should be remembered that not a dollar of interest was paid to the first mortgage bondholders after July 1, 1882.

The bills of complaint for the foreclosure of the first mortgages, and the foreclosure decrees rendered under said bills of complaint, show that default in payment of interest on the first mortgage bonds occurred January 1, 1883, and this default was, of course, for the six month's interest begining July 1, 1882, and maturing January 1, 1883.

(Rec. in Cause No. 252, pp. 28, 161, 465, 474.)

E. E. Dwight was appointed Receiver under the creditor's bill brought by Braman on August 1, 1883. No interest on the first mortgage bonds was paid after July 1, 1882. Hence it is clear that the bondholders received nothing in payment of interest on their bonds either from earnings of the road, or from any other source, for *thirteen months* prior to the appointment of Dwight as Receiver.

There certainly was, therefore, no diversion of earnings of the road accrued prior to August 1, 1883, to the payment of interest on first mortgage bonds.

It is equally clear from the records of these appeals that there was no diversion of earnings of the road accrued prior to August 1, 1883—the date of the appointment of Dwight Receiver—to the benefit of the bondholders in the way of betterments and improvements to the mortgaged estate.

The records prove that there were no earnings to divert. When Dwight was appointed Receiver the pay rolls of the employees engaged in operating the road,

for the months of June and July, 1883, were wholly unpaid, and large amounts were due upon the pay rolls for months prior to June, 1883.

A few days after his appointment Receiver Dwight reported to the Court that when he took possession as Receiver the pay roll for June, 1883, amounting to $107,464.88 was unpaid; that he had only been able to pay a small part of it, and asked permission to issue Receiver's certificates and borrow $94,000 to apply upon the June, 1883, pay roll. The Court granted that order.

(Rec. in Cause No. 252, p. 17.)

That the pay roll for July, 1883, was unpaid when Dwight was appointed Receiver is proved by the fact that Receiver McNulta on January 6, 1886—after the foreclosure sales—reported to the Court that $87,725.82 then remained due and unpaid on the pay roll for July, 1883, and also reported many thousands of dollars still due on pay rolls for months prior to the month of July, 1883, begining with the mouth of February, 1883.

(Rec. in Cause No. 252, p. 520.)

The preliminary report of Master Cox shows that at the time Dwight was appointed Receiver—August 1, 1883—the railroad company owed, in addition to the unpaid pay rolls of employees above mentioned, for debts incurred for operating expenses and supplies, $274,908.08.

(Rec. in Cause No. 252, p. 208.)

That these debts for operating expenses and supplies did not include equipment rental, and that the railroad company owed a large floating debt in addition to the $274,908.08, is shown by the next page of the report of Master Cox.

(Rec. in Cause No. 252, p. 204.)

The three items of debt for purely operating expenses due and unpaid when Dwight was appointed Receiver, as above stated, amount in the aggregate to $470,098.78.

There is no pretence, or proof, any where in the records of either of these appeals, that a dollar was expended upon the road in betterments and permanent improvements between July 1, 1882, and August 1, 1883.

While these statements, drawn directly from the records in these appeals, show conclusively that there was no diversion of the earnings of the road accrued prior to the appointment of Receiver Dwight—August 1, 1883—to the benefit of first mortgage bondholders, they furnish equally conclusive proof that the road never earned enough to pay its ordinary operating expenses, without including anything for equipment rental.

That there was no diversion of earnings to the benefit of first mortgage bondholders during either of the receiverships, is equally well established by the records of these appeals.

In his preliminary report, filed July 16, 1884, Master Cox finds and reports that the Receiver's indebtedness accrued between August 1, 1883, and July 1, 1884—a period of only eleven months—amounted to $981,189.64.

Subtracting from this total Receiver's indebtedness the $403, 997.00 allowed by Master Cox in this report for rentals upon rolling stock during the receivership, which appellant here contends ought not to be allowed or paid, still leaves the deficit between the gross earnings of the road during the eleven months of the receivership and the expenses of the receivership during the same period of eleven months, $577,192.64.

(Rec. in Cause No. 252, pp. 201, 202, 203.)

Subsequent reports of Masters Fishback & Ricks show that the amount of receivership indebtedness found by Master Cox, as above stated, was under, rather than over, the true amount.

But we are not limited to the statements and findings set forth in the report of Master Cox.

On February 9, 1886, Master Fishback was, by special order, directed to investigate and report whether any earnings of the road accrued after August 1, 1882, had been diverted to the benefit of bondholders; also whether the road earned its operating expenses during the six months prior to August 1, 1883, the date of the appointment of Dwight as Receiver under the creditor's bill, and also whether the road during either of the receiverships made any net earnings over and above operating expenses.

(Rec. in Cause No. 252, p. 537.)

Before Master Fishback began his investigation under this order, a similar order was entered requiring W. P. Fishback and A. J. Ricks as joint Special Masters to make this investigation, and report upon these same points, in connection with other matters referred to them.

This last mentioned order and the report of Masters Fishback and Ricks under the order are omitted from the record because said order was entered, and the report of the joint Masters thereunder was filed after the appeal in Cause No. 252 was perfected and the record made up.

On March 10, 1887, Masters Fishback and Ricks filed their report under this joint reference.

By stipulation signed by the Solicitors for all of the Appellees in these two appeals, and also by Solicitors for Appellant Kneeland, this report has been made part of the record in Cause No. 252,—the first of these two ap-

peals here presented. That part of the joint report of Masters Fishback and Ricks, filed March 10, 1887, pertaining to the points under consideration, is in the following words:

"Second. That said Masters shall as soon as possible report upon all the debts and claims paid and unpaid, arising during the time aforesaid.

"Finding. The aggregate of all the debts and claims paid and unpaid, arising prior to August 1, 1884, including all possible liabilities so far as are disclosed by the records of the receiverships and the files of the Circuit Court at Indianapolis, is $830,895.05 as shown by the statement of Neil McKinnon herewith submitted and marked "B" which represents the aggregate amount that may be required to be paid out of the proceeds of sales, if said claims are finally approved by the Court.

"We also attach hereto and mark "A" a schedule of specific claims arranged in alphabetical order, showing period when and under what receiverships, claim accrued and whether the same is approved or unapproved. Separate reports have been filed as to many of these claims giving a full statement thereof, and these reports have been heretofore filed in the Circuit Court at Indianapolis in compliance with an earlier order of that Court. This schedule contains all claims filed and brought to our attention to this date. But in the column marked "unapproved" there are claims upon which evidence has been taken and which will be included in a future report.

"We add at the foot of the claims as examined and approved by the undersigned Masters, a list of claims reported upon by Special Master J. D. Cox under orders

of reference made at Cincinnati and Indianapolis. He has filed duplicate reports upon the special claims considered by him, one in the Circuit Court of the United States for the District of Indiana, and one in the said Court for the Southern District of Ohio.

"We include the sums found due by said Cox and submit his findings as to the amounts due, subject to such exceptions as may have been, or may be, filed thereto by Counsel.

"Third. We are further required to report as to whether any of the earnings of the Toledo, Cincinnati and St. Louis Railroad Company were, during the period commencing six months before the appointment of said Dwight Receiver, and ending on the first of August, 1884, diverted from the payment of labor and supplies, *i. e.* from the payment of operating expenses.

"Finding. We have examined the books and records of the Receivers, and of the Company, in the possession of said Receivers, personally, and with the aid of accountants, and find that there was no diversion of the earnings of said road during the period named from the payment of operating expenses. Our investigations on this point fully confirm the reports heretofore made by Special Master J. D. Cox and the Receivers, that no such diversion was made.

"We are further ordered to report as to whether any net earnings were ever made by said railroad company or by said Receivers or either of them during the period aforesaid.

"Finding. We report in response to the above inquiry that the books examined as above stated show not

only that no net earnings were ever made, but that there was a large deficit for the period named.

"All of which is respectfully submitted,

"WILLIAM P. FISHBACK AND

"A. J. RICKS,

"*Special Masters.*"

These reports of Masters Cox, Fishback and Ricks find abundant support and confirmation in the monotonous monthly reports of the Receivers, each succeeding report showing the mortgaged estate more deeply and hopelessly submerged by Receiver's indebtedness. A dreary list of these monthly reports will be found in the record. They show that the road fell far short of earning its current operating expenses *without including anything for the rental of this equipment, voluntarily left in the possession of the Receivers by the appellees.*

(Rec. in Cause No. 252, pp. 574 to 587.)

The lengthy statement put into the record by Receiver Craig as his vindication, gives added emphasis to the joint report of Masters Fishback and Ricks above quoted.

(Rec. in Cause No. 1537, pp. 179 to 208.)

The record shows that the main line of the Toledo, Cincinnati and St. Louis Railroad extending from Toledo, Ohio, to East St. Louis, Illinois, was mortgaged by first and second, or income mortgages, to the amount of $9,464,614.60.

(Rec. in Cause No. 252, pp. 322 to 324.)

Appellant Kneeland bid in this main line at the foreclosure sales for $1,501,000.

(Rec. in Cause No. 252, pp. 514, 519.)

By the foreclosure decrees it was decreed that sales

of the two divisions of the main line should not be made for an aggregage sum less than $1,500,000.

(Rec. in Cause No. 252, pp. 467, 479.)

Under the order of reference under which Masters Fishback and Ricks filed their joint report of March 10, 1887, they were directed among other things to investigate and report whether either of the divisions of the road had been sold at foreclosure sale for less than the amount of receivership indebtedness allotted to it. The joint report of Masters Fishback and Ricks filed March 10, 1887, is by special stipulation, made part of the record in Cause No. 252 as hereinabove stated. By that report it is shown that the share of receivership indebtedness allotted to the divisions constituting the main line purchased by Kneeland is $389,274.83. This amount of receivership indebtedness allotted to the main line purchased by Kneeland does not include any amount for rental of equipment. The joint report of Masters Fishback and Ricks expressly states that *car rentals are excluded* from the computations which result in the amount of receivership indebtedness above stated.

If the $218,462.65 allowed for equipment rental against the main line purchased by Kneeland under the two decrees here appealed from is added to the above named receivership indebtedness, it would make the total amount of receivership indebtedness to be paid out of the proceeds of sale of the main line of railroad extending from Toledo, Ohio, to Kokomo, Indiana, aggregate $607,736.98. The total price received at the foreclosure sales of the main line being, as above shown, $1,501,000.

This same showing proves conclusively that if the main line bondholders are finally obliged to pay the

equipment rental involved in these appeals, the vendors of railroad equipment under contracts of conditional sale acquire, by such contracts, a lien upon the entire property of the railroad company, and upon the proceeds of the foreclosure sale thereof, far superior to, and more valuable than, the lien of first mortgage bondholders.

From the foregoing statements of facts, drawn from, and supported by, the records of these appeals, the following conclusions touching the points directly involved in this litigation, seem plain and irresistible:

1. The contracts under which these appellees delivered the equipment involved in this litigation to the railroad company, are contracts of conditional purchase and sale.

2. This equipment was voluntarily left, by these appellees, in the possession of the railroad company and the Receivers, after default occurred in payments required by the contracts of conditional purchase and sale. These appellees made no demand for redelivery, declared no forfeiture under the contracts of conditional sale, and neither made nor attempted to make any new contracts regarding the use of said equipment while so voluntarily left in the possession of the railroad company and the Receivers.

3. The security these appellees chose to take from the railroad company when they delivered to it this equipment, was that the appellees should retain title to the equipment, and the right to retake possession of it on default in any payment under the contracts of conditional sale. They did not see fit to subject their equipment to the lien of the mortgages then resting upon the railroad, and of the existence of which they had full

notice. But now, in addition to the full security chosen by themselves, they are here asking to be *preferred* to first mortgage bondholders, in the distribution of the proceeds of foreclosure sale of the railroad, although it is very evident that the bondholders never can, even without yielding preference to the claims of these appellees here presented, receive more than a small percentage of the principal paid by them for their bonds.

4. When this equipment was delivered to the railroad company under these contracts of conditional sale, the railroad was mortgaged, under duly recorded mortgages, for far more than its real value. Much of this equipment was delivered to the railroad company after default had been made by the railroad company in the payment of interest on its first mortgage bonds.

5. There was no diversion of earnings of the railroad company accrued prior to the appointment of the Receiver under the creditor's bill brought by Braman, to the benefit of mortgage bondholders, either to the payment of interest on mortgage bonds, or to the payment for betterments and improvements to the mortgaged estate.

6. The railroad company never earned sufficient money to pay its ordinary current operating expenses,—without including any equipment rental,—prior to the appointment of a Receiver under the creditor's bill brought by Braman, August 1, 1883.

7. There was no diversion of the earnings of the railroad during the receivership of E. E. Dwight under the creditor's bill brought by Braman, to-wit: from August 1, 1883, to December 1, 1883, either to the payment of interest on mortgage bonds, or to the payment for betterments and improvements to the mortgaged estate.

8. There was no diversion of earnings of the railroad during the receivership under the foreclosure suits, to-wit: from December 1, 1883, to January 1, 1885, either to the payment of interest on mortgage bonds or for the payment for betterments and improvements to the mortgaged estate.

The gross earnings of the railroad fell far short of being sufficient to pay ordinary current operating expenses,—without including anything for equipment rentals,—under both of the receiverships, to-wit: from August 1, 1883, to January 1, 1885.

9. The use, during the receiverships, of the equipment delivered to the railroad company by these appellees under their contracts of conditional sale, added no value whatever to the mortgaged estate, and did not add a penny to the proceeds of foreclosure sale of the railroad and property.

In view of these proved facts, appellant Kneeland earnestly contends that it is contrary to law, equity and good conscience to *prefer* the claims of these appellees, to the claims of first mortgage bondholders, and to require more than one-eighth part of the entire proceeds of foreclosure sale to be paid to these appellees, *in preference* to the application of said proceeds of sale to payment upon first mortgage bonds and defaulted interest coupons.

ASSIGNMENT OF ERRORS.

FIRST. *The Circuit Court erred in decreeing that these appellees,—who delivered the equipment involved in these appeals to the railroad company under contracts by which they retained the title to the equipment until full payment was made therefor, and the right to retake possession thereof upon*

default in any payments required by the contracts; and who voluntarily left their equipment in the possession of the insolvent railroad company and its Receivers, after the railroad company had defaulted in payment of interest on its first mortgage bonds, and had also defaulted in payments required by the contracts under which possession of the equipment was delivered to the railroad company; without demanding possession of said equipment; without declaring any forfeiture under their contracts of conditional sale; and without making any contracts whatever regarding the use of said equipment by the Receivers of the insolvent railroad company,—are entitled in equity to payment for the use of, and repairs to, their equipment while so voluntarily left in the possession of the Receivers of the bankrupt railroad company, out of the proceeds of foreclosure sale, in preference to first mortgage bondholders; notwithstanding the fact that prior to the first receivership the railroad company never earned its ordinary current operating expenses, and that no earnings of the railroad company accrued prior to the first receivership were ever diverted to the benefit of mortgage bondholders either in payment of bond interest, or in payment for betterments and improvements to the mortgaged estate; and notwithstanding the fact that during both of the receiverships, under the creditor's bill and under the foreclosure suits, the earnings of the road fell far short of being sufficient to pay ordinary current operating expenses without including anything for equipment rental; and that no part of the earnings accrued during the two receiverships, or either of them, was diverted to the benefit of mortgage bondholders either in payment of bond interest, or in payment for betterments and improvements to the mortgaged estate; and notwithstanding the further fact that the use, by the Receivers, of the equipment of these appellees added no value whatever

to the mortgaged estate, and did not increase the fund arising from the foreclosure sales of the railroad a single dollar.

SECOND. *The Circuit Court erred in decreeing that these appellees,—who delivered the equipment involved in these appeals to the railroad company under contracts of conditional purchase and sale, by which they retained title to the equipment until fully paid for, and the right to retake possession thereof upon default in any payments required by said contracts; and who voluntarily left their equipment in the possession of the Receiver appointed under the suit brought by Braman as an unsecured floating debt creditor, after default in payments required by their contracts of conditional purchase and sale; without demanding possession of said equipment from said unsecured creditor's Receiver; without declaring any forfeiture under their said contracts; and without making any contracts whatever regarding the use of their said equipment by the said Receiver appointed under the unsecured creditor's suit,—are entitled in equity to payment for the use of, and repairs to, their equipment, while so voluntarily left in the possession of the Receiver appointed under the unsecured general creditor's suit, out of proceeds of foreclosure sales of the railroad, in preference to first mortgage bondholders; notwithstanding the fact that no part of the earnings of the railroad company accrued prior to said unsecured creditor's receivership were ever diverted to the benefit of the mortgage bondholders; and notwithstanding the fact that no part of the earnings of said unsecured creditor's receivership were ever diverted to the benefit of the mortgage bondholders; but that on the contrary after all of the earnings of said unsecured creditor's receivership had been applied to the payment of operating expenses a large portion of the ordinary current operating expenses of said unsecured creditor's receivership remained wholly unpaid; and notwith-*

standing the further fact that the use of the equipment of these appellees during said unsecured creditor's receivership, added no value whatever to the mortgaged estate, and did not increase the fund arising from the foreclosure sales of the railroad by so much as a penny.

THIRD. *Even if it were legal and equitable to pay these appellees for the use of their equipment while voluntarily left by them in the possession of the Receivers after default in payments required by their contracts of conditional purchase and sale, without any contracts regarding its use, out of the proceeds of the foreclosure sales of the railroad, in preference to first mortgage bondholders,—which appellant Kneeland denies,—still the Circuit Court erred in refusing to adjust and compute the amount to be paid to appellees for such use upon the basis of* MILEAGE EARNINGS *of said equipment while in actual operation; and in decreeing the payment to these appellees out of the proceeds of the foreclosure sales of the railroad, in preference to first mortgage bondholders, and as a lien prior and superior to the lien of the first mortgage bonds, of an amount from three to five times larger than could have been found due to these appellees upon the basis of* MILEAGE EARNINGS *of said equipment while in actual service.*

ARGUMENT.

I.

THE CONTRACTS UNDER WHICH THESE APPELLEES DELIVERED THEIR EQUIPMENT TO THE RAILROAD COMPANY ARE CONTRACTS OF CONDITIONAL PURCHASE AND SALE.

These contracts are to be measured by their legal effect and the end they were manifestly designed to accomplish, rather than by the name affixed to them by the contracting parties. A careful examination of these

contracts will satisfy this Court that Master Cox and the Circuit Court were right in finding and decreeing them to be contracts of conditional purchase and sale.

Each of these contracts contains, in substantially the same form, the following elements:

1. The full market price of the equipment is to be paid in specified installments, within the period named in the contract. At the end of that period, if the required payments have all been made, the equipment is to become the property of the railroad company upon payment of a cent or two for each engine and car.

To illustrate this point. Under the first contract of the United States Rolling Stock Company the railroad company agreed to pay, *within four years*, one hundred and twenty thousand dollars for two hundred and fifty box cars. At the end of the four years, if the required payments had all been made, the two hundred and fifty cars were to become the property of the railroad company upon payment of *one dollar*,—less than a half a cent for each car.

(Rec. in Cause No. 252, pp. 38 to 43.)

Under the contracts of George William Ballou, Trustee, the railroad company agreed to pay the full market price of the equipment within ten years, and, at the end of that period, all required payments having been made, the equipment was to become the property of the railroad company upon payment of *ten cents* for each car and *one dollar* for each engine.

(Rec. in Cause No. 1537, p. 206.)

2. In addition to paying the full market value of the equipment within the periods prescribed in the contracts, the railroad company also agreed *to pay semi-*

annual interest on all deferred payments required by the contracts; and also *to pay all taxes and assessments* levied upon the equipment; and also *to keep the equipment insured* for the benefit of these appellees.

(Rec. in Cause No. 252, pp. 38, 42, 50, 54, 58, 61.)
(Rec. in Cause No. 1537, pp. 204, 206.)

It will instantly be recognized that these are not elements of an ordinary lease, but that they are proper provisions of a contract of conditional purchase and sale.

There is a further provision in these contracts that stamps them indelibly as contracts of conditional purchase and sale. In case of default in any of the payments required by the contracts these appellees were authorized to retake the equipment and sell it at either public or private sale, either with or without notice, and apply the proceeds of sale—after payment of costs—upon the unpaid installments named in the contracts; and if the equipment did not sell for enough to pay in full the total amount required by the contracts, the railroad company agreed to pay the balance forthwith on demand.

(Rec. in Cause No. 252, pp. 42, 43, 54, 55, 62.)
(Rec. in Cause No. 1537, p. 505.)

It is utterly impossible for any one to believe for a moment that a contract containing such a provision is *merely a lease.*

3. By these contracts these appellees were to retain the title to the equipment until payment of the full market value of the equipment had been made. In the meantime, the railroad company, in addition to the various payments and requirements above mentioned, agreed to keep the equipment in good repair,

and, at its own expense, immediately replace any engines and cars lost or destroyed with engines and cars of like quality and value, and also to keep all of the equipment conspicuously marked and lettered, as by the contracts required.

(Rec. in Cause No. 252, pp. 40, 41, 53, 61.)
(Rec. in Cause No. 1537, pp. 205, 206.)

In view of the above mentioned conditions and requirements of these contracts it seems absurd to contend, as was contended in the Circuit Court, that they are *merely leases.*

But we are not without authority on this point.

In *Hervey, et al.*, v. *Rhode Island Locomotive Works*, 93 U. S., 672, 673, this Court held a contract in every essential element identical with the contracts involved in these appeals, to be a contract of conditional purchase and sale, although it, like these contracts, was disguised under the name LEASE.

In announcing the decision of this Court Mr. Justice Davis said: "Nor is the transaction changed by the agreement assuming the form of a lease. In determining the real character of a contract, Courts will always look to its purpose, rather than to the name given to it by the parties. If that purpose be to give the vendor a lien on the property until payment in full of the purchase-money, it is liable to be defeated by creditors of the purchaser who is in possession of it. This was held in *Murch* v. *Wright*, 46 Ill., 488. In that case the purchaser took from the seller a piano at the price of $700. He paid $50 down, which was called rent for the first month, and agreed to pay, as rent, $50 each month, until the whole amount should be paid, when he was to own the piano. The Court held, 'that'

it was a mere subterfuge to call this transaction a lease,' and that it was a conditional sale, with the right of rescission on the part of the vendor, in case the purchaser should fail in payment of his installments,—a contract legal and valid as between the parties, but subjecting the vendor to lose his lien in case the property, while in possession of the purchaser, should be levied upon by his creditors. That case and the one at bar are alike in all essential particulars.

"The engine Smyser, the only subject of controversy in this suit, was sold on condition that each and all of the installments should be regularly paid, with a right of rescission on the part of the vendor in case of default in any of the specified payments.

"It is true the instrument of conveyance purports to be a lease, and the sums stipulated to be paid are for rent; but this form was used to cover the real transaction, as much so as was the rent of the piano in *Murch* v. *Wright*, *supra*. There the price of the piano was to be paid in thirteen months, and here, that of the engine, $12,098.96, in one year. It was evidently not the intention that this large sum should be paid as rent for the mere use of the engine for one year. If so, why agree to sell and convey the full title on the payment of the last installment? In both cases the stipulated price of the property was to be paid in short installments, and no words employed by the parties can have the effect of changing the true nature of the contracts."

In *Foddick* v. *Schall*, 99 U. S., 235, 250, 255, the contract between Schall and the Chicago, Danville and Vincennes Railroad Company was of the same general character as the contracts here under consideration, although much shorter and less specific.

In rendering the decision of this Court, after citing, with approval, the decision in *Hervey, et al.*, v. *Rhode Island Locomotive Works, supra*, Mr. Chief Justice Waite used the following language: "As between the parties, notwithstanding the Illinois statute, the transaction is just what, on its face, it purports to be, 'a conditional sale, with a right of rescission on the part of the vendor, in case the purchaser shall fail in payment of his installments.' * * * He asks to be paid a rent for his cars; but he entered into no express contract with the company which requires such a payment, and there is nowhere to be found any proof of an implied obligation to make such compensation. Two years and more before the appointment of the Receiver by the State Court, he contracted to sell his cars to the company at an agreed price, payable in installments, secured by what was in legal effect a paramount lien upon the cars. Payments were made according to the contract until October, 1874, when they stopped. The cars remained in use after that, *not under a new contract of lease but under the old contract of sale.* The price agreed upon, not having been paid in full, the power of reclamation, which was reserved, has been exercised and sustained. The cars were not included in what was sold at the foreclosure sale, and consequently have contributed nothing directly to the fund now in Court for distribution."

In *Harkness* v. *Russell*, 118 U. S. 663, a contract of the same legal tenor and effect as the contracts of these appellees, was held to be a contract of conditional purchase and sale.

In the opinion, Mr. Justice Bradley gives a clear definition of contracts of conditional purchase and sale, and follows this definition with an exhaustive review of

English decisions, and the decisions of the highest Courts of nearly all the States of the United States.

That portion of the opinion defining contracts of conditional purchase and sale is as follows: "But, so far as words, and the express intent of the parties can go, it is perfectly evident that it was not an absolute sale, but only an agreement to sell upon condition that the purchasers should pay their notes at maturity. The language is: 'the express condition of this transaction is such that the title * * * does not pass * * * until this note and interest shall have been paid in full.' If the vendees should fail in this, or if the vendors should deem themselves insecure before the maturity of the notes, the latter were authorized to repossess themselves of the machinery, and credit the then value of it, or the proceeds of it if they should sell it, upon the unpaid notes. If this did not pay the notes, the balance was still to be paid by the makers by way of 'damages and rental for said machinery.' This stipulation was strictly in accordance with the rule of damages in such cases. Upon the agreement to sell, if the purchaser fails to execute his contract, the true measure of damages for its breach is the difference between the price of the goods agreed on and their value at the time of the breach or trial, which may be fairly stipulated to be the price they bring on a re-sale. It can not be said, therefore, that the stipulations of the contract were inconsistent with, or repugnant to, what the parties declared their intention to be, namely, to make an executory and conditional contract of sale. Such contracts are well-known in the law, and often recognized; and when free from any fraudulent intent are not repugnant to any principle of justice or equity, even though posses-

sion of the property be given to the proposed purchaser. The rule is formulated in the text-books and in many adjudged cases. In Lord Blackburn's Treatise on the Contract of Sale, published forty years ago, two rules are laid down as established: (1) That where by the agreement the vendor is to do anything to the goods before delivery, it is a condition precedent to the vesting of the property. (2) That where anything remains to be done to the goods for ascertaining the price, such as weighing, testing, etc., this is a condition precedent to the transfer of the property. Blackburn on Sales, 152. And it is subsequently added, that 'the parties may indicate an intention, by their agreement, to make any condition precedent to the vesting of the property, and, if they do so, their intention is fulfilled.' Blackburn on Sales, 167. Mr. Benjamin, in his Treatise on Sales of Personal Property, adds to the two formulated rules of Lord Blackburn, a third rule, which is supported by many authorities, to-wit: (3) Where the buyer is by the contract bound to do anything as a condition, either precedent or concurrent, on which the passing of the property depends, the property will not pass until the condition be fulfilled, even though the goods may have been actually delivered into the possession of the buyer. Benjamin on Sales, 2d Ed., p. 236; 3d Ed., § 320."

In view of the terms, conditions and requirements of the contracts involved in these appeals, and the decisions of this Court above cited, the conclusion that these contracts are contracts of conditional purchase and sale, and are not *mere leases*, seems irresistible.

II.

NO SUPERIOR SANCTITY, OR INHERENT PRIORITY OF LIEN ATTACHES TO CLAIMS AGAINST A RAILROAD RECEIVERSHIP. THEY STAND OR FALL IN OBEDIENCE TO THE SAME GENERAL PRINCIPLES OF LAW AND EQUITY GOVERNING ANY OTHER INDEBTEDNESS.

There seems to be a general impression current that *all* claims against, and debts incurred by, a railroad receivership, from the simple fact that they are receivership indebtedness, possess, inherently, a first lien, not only upon the earnings of the receivership, but also upon the proceeds of foreclosure sale of the railroad, prior and paramount to the lien of first mortgage bonds.

The impression is rankly erroneous. It must, however, be admitted that the Circuit Courts have quite often rendered decrees in favor of claims against railroad receiverships strongly tending to confirm this erroneous impression. It sometimes seems as though the first mortgage bondholders who furnish the cash to buy the right of way, furnish the rails and materials, and construct the railroad, have really less security than the so-called unsecured creditor who asserts a claim against the receivership. The appeals here presented well illustrate this point.

These appellees are here insisting that this Court affirm the decrees of the Circuit Court requiring over *one-eighth* of the entire proceeds of foreclosure sale to to be paid to them for the use of their equipment during seventeen months of the receivership, in preference to first mortgage bondholders; not because the bondholders got some of the earnings of their equipment, for they know that the bondholders never received a

cent of the earnings of their equipment; not because the receivership made net earnings and the surplus went to the benefit of the bondholders, for they know from these records that the deficit between the total earnings of the receivership and its ordinary expenses, without including anything for rental for their equipment, was more than five hundred thousand dollars, (*Supra*, p. 44); not because the use of the equipment preserved any valuable right or franchise for the benefit of the bondholders, for they know from these records that the continued operation of the railroad during the receivership, up to the time they were compelled by order of the Court to take their equipment away, was a curse, rather than a blessing, to the bondholders; not because the use of their equipment added value to the mortgaged estate, and increased the fund arising from the foreclosure sales, for they know from the records that the use of their equipment did not add one dollar to the value of the mortgaged estate, and did not increase the proceeds of the foreclosure sales a single penny; not even because they had contracts with the Court for the use of their equipment, upon which to base claims of superior sanctity, for they well know that they never had, and never attempted to procure, any contracts with the court for the use of their equipment during the seventeen months from August 1, 1883, to January 1, 1885, for which they are here claiming two hundred and eighteen thousand, four hundred and sixty-two dollars and sixty-five cents, and interest thereon, out of the fund arising from foreclosure sales of the railroad. Why then are they here insisting upon payment of this large amount? The only answer is that they assert that their claims are liens prior and para-

mount to the lien of first mortgage bondholders, simply and solely because they are claims against a railroad receivership. They have no other ground upon which to base any claim to priority of lien. Thus their claims, when analyzed and put upon their real basis, are proved to be contrary to law, equity and good conscience.

There are cases and circumstances under which it is lawful and equitable to grant priority of lien to creditors of railroad receiverships. The decisions of this Court carefully and clearly define the cases and circumstances under which such priority of lien will be granted.

If creditors allow claims in their favor to accrue against railroad receiverships in cases and under circumstances not falling under the well defined rules of law and equity, they have no right to claim priority of lien over mortgage bondholders, and must stand as general unsecured creditors. The fact that they have given credit to railroad receiverships gives them no higher equity, or lien, than if they had given credit to the railroad companies prior to the receiverships, *unless* their claims fall clearly within the well defined classes of claims to which priority of lien over mortgage bonds is lawfully and equitably granted.

As has been shown the claims of these appellees do not fall within the rules well established by the decisions of this Court, and are not entitled, on any ground known to law or equity to priority of lien over mortgage bonds.

In discussing the power and right of Courts to overwhelm railroads by receivership indebtedness, and thereby blot out the security of the mortgage bondholders, Caldwell, J. in *Credit Company* v. *Arkansas Central Railroad Company*, 15 Fed. Rep. p. 49, well said: "But

it is a power to be sparingly exercised. It is liable to great abuse, and while it is usually resorted to under the pretext that it will enhance the security of the bondholders, it not unfrequently results in taking from them the security they already have, and appropriating it to pay debts contracted by the Court. The history of *Wallace* v. *Loomis*, *supra*, furnishes an instructive lesson on this subject.

"This Court has uniformly refused to arm its receivers with such a dangerous power. When the road cannot be kept running without its exercise, except to a very limited extent, the safe and sound practice is to discharge the Receiver or stop running the road, and speed the foreclosure."

Since the decision of this Court in *Union Trust Company* v. *Illinois Midland Company* 117 U. S. 434, the doctrine of superiority of lien of general receivership indebtedness over mortgage bonds, has certainly had no foundation to rest upon.

In that case money borrowed by the Receiver and applied directly to the necessary operating expenses of the road during the receivership, and claims for rent of, and repairs to, rolling stock used by the Receiver in operating the road during the receivership; were held not to be entitled to priority of lien, over mortgage bonds, upon the proceeds of foreclosure sale.

In the opinion, at pages 477 and 479, Mr. Justice Blatchford said: "But, by the final decree, the items of $54,900 and $32,000 are declared to be subordinate to the mortgage bonds, while allowed as indebtedness contracted by the Receivers. We are of opinion that these two claims ought not to be allowed priority. The debts were contracted without the previous authority of the

Court. The amounts were large; and we can not sanction the action of the Receiver in borrowing sums of money so large in amount, without the previous authority of the Court, even though the purposes to which the money was applied were such as is shown. * * * But in the final decree, the item of $29,064.84 is not given such priority. We are of opinion that this item cannot be allowed priority, for the reason that the borrowing of the money for which the notes were given was not sanctioned in advance by the Court. Though made up of amounts, not, perhaps, large in themselves, the aggregate can not be called small; and there never could be any difficulty in obtaining an order of the Court, if one were proper, to borrow money to a specified total amount, for specific purposes. In any event, the item of $7,000 could not be allowed priority, as the purposes for which that sum was used were not sufficiently shown.

"Waring Bros. also object because the final decree orders that the 'rents due Warring Bros., for use of rolling-stock as shown by Schedules U. and W. of' the final 'report of the special commissioner' and 'the sum of $21, 099.43 due Waring Bros. for extraordinary depreciation of rolling-stock,' be subordinated to the mortgage bonds of the three sectional roads respectively.

"The net amount due for the above rents, as stated in those schedules, with interest to January 15, 1885, is $325,354.35, and that amount is allowed as a debt by the commissioner. The Court did not allow it priority, and we see no sufficient ground for reversing the decision. The same conclusion is reached as to the item for $21,099.43."

In these appeals there is no claim, or pretence, that these appellees ever had, or attempted to procure, any contracts with the Court regarding the use of their equipment by the Receivers.

It is perfectly evident that they purposely refrained from seeking any contract with the Court touching the use of the equipment by the Receivers, and voluntarily left it in possession of the Receivers under the hope that they could obtain from the Court decrees requiring specific performance of their contracts of conditional purchase and sale. Their intervening petitions cited *supra*, pp. 18 to 29, abundantly support this suggestion.

Having failed to obtain decrees requiring specific performance of their contracts, they now ask to be preferred to first mortgage bondholders, and to be paid $218,462.65, with interest, out of proceeds of the foreclosure sales, in preference to first mortgage bondholders, for use of, and repairs to, their equipment while in the possession of the Receivers, without any contracts with the Court.

They never asked any order of Court regarding rental of their equipment. They did not even ask that the Master be required to investigate and report as to whether the use of their equipment was necessary, or as to whether its use would be profitable to the receivership. The preliminary report of Master Cox was filed July 16, 1884,—nearly a year after the first Receiver was appointed, and that was the first Master's report filed that contained any reference whatever to the use of the equipment of these appellees by the Receivers.

In considering this point certain dates should be remembered. The first Receiver, Dwight, was appointed August 1, 1883. The United States Rolling

Stock Company filed its intervening petition November 5, 1883; D. B. Paul, Trustee, filed his intervening petition December 8, 1883. In both of these intervening petitions specific performance of the contracts of conditional purchase and sale was asked, and no other relief was sought.

The intervening petitions of the other appellees were filed on the following dates: American Loan and Trust Company, June 27, 1884; E. B. Phillips, Trustee, June 27, 1884; the Grant Locomotive Works, R. S. Grant and the American Loan and Trust Company, October 23, 1884; Pennock Bros., June 21, 1884; George William Ballou, Trustee, January 27, 1886.

Not one word is said in any of these intervening petitions about the use of this equipment by the Receivers *on rental*. No contract regarding the rental is asked. Hence it is very clear that the claims of these appellees fall directly under the rule of law distinctly announced in the decision of this Court in *Union Trust Company* v. *Illinois Midland Company, supra*, and are not entitled to priority over first mortgage bonds in the distribution of the proceeds of the foreclosure sales.

III.

THESE APPELLEES ARE NOT, UNDER THE FACTS, ENTITLED TO A LIEN UPON THE FUND ARISING FROM THE FORECLOSURE SALES OF THE RAILROAD, PRIOR AND SUPERIOR IN EQUITY TO THE LIEN OF THE FIRST MORTGAGE BONDS, FOR THE USE OF THEIR EQUIPMENT BY THE RECEIVERS. THEIR CLAIMS ARE, IN LAW AND EQUITY, INFERIOR AND SUBORDINATE TO THE LIEN OF THE FIRST MORTGAGE BONDS UPON THE ENTIRE PROCEEDS OF SALE.

This is the chief proposition of this discussion. If

it is correct the decrees in favor of appellees cannot be sustained.

The clearly established facts upon which this proposition is based are:

1. No earnings of the railroad company accrued prior to the appointment of the first Receiver were diverted to the benefit of the mortgage bondholders, either in payment of bond interest, or in payment for betterments and improvements to the mortgaged estate.

The bondholders never received a dollar of interest on their bonds after July 1, 1882,—thirteen months before the first Receiver was appointed. No betterments or improvements were made to the mortgaged estate during that period.

2. Prior to the appointment of the first Receiver the railroad company never, at any time, made sufficient earnings to pay its ordinary current operating expenses, and a large amount due for ordinary current operating expenses remained unpaid on August 1, 1883, when Dwight was appointed Receiver.

3. No earnings of the receiverships, or of either of them, were diverted to the benefit of the mortgage bondholders, either in payment of bond interest, or in payment for betterments and improvements to the mortgaged estate.

No bond interest was paid during the receiverships. All of the repairs, replacements and betterments made to the mortgaged estate during the receiverships were paid for with money borrowed on Receiver's certificates,—which certificates have been paid out of the proceeds of the foreclosure sales of the railroad.

4. The total earnings of the receiverships from

August 1, 1883, to January 1, 1885,—the period covered by the claims of these appellees,—fell hundreds of thousands of dollars short of being sufficient to pay ordinary current operating expenses,—without including anything for the use of the equipment belonging to these appellees.

5. The entire earnings of the receiverships from August 1, 1883, to March 10, 1886, at which last named date the purchaser at the foreclosure sales took possession, lacked nearly five hundred thousand dollars of being sufficient to pay ordinary current operating expenses. Neither of the receiverships at any time made any net earnings.

6. The contracts of these appellees under which they delivered the equipment to the railroad company are contracts of conditional purchase and sale.

Under these contracts these appellees retained the title to the equipment, and the right to retake possession of it upon default in any payments required by the contracts, as their chosen security.

7. These appellees, with full knowledge of the insolvency of the railroad company, and with full notice that the railroad was heavily mortgaged, left their equipment in the possession of the Receivers, without demanding possession of it from the Receivers; without declaring forfeitures by reason of default in payments under their contracts; and without making, or seeking to make, any contracts whatever regarding its use by the Receivers.

8. The use of the equipment belonging to these appellees for which they are here asking payment out of proceeds of foreclosure sale in preference to first mortgage bondholders, neither added intrinsic value to

the mortgaged estate, nor preserved any valuable right for the bondholders.

9. The use of this equipment did not increase the fund arising from the foreclosure sales of the railroad one dollar.

On January 1, 1885, these appellees retook possession of their equipment and have disposed of it for their own benefit.

With the equipment redelivered to them, and the payments made on it by the railroad company under the contracts of conditional purchase and sale prior to the appointment of the first Receiver, these appellees have, beyond doubt, already realized more than five times as much on each dollar invested by them, as the first mortgage bondholders have realized on their investments in the first mortgage bonds.

The application of three firmly established principles of law to these proved facts, will conclusively demonstrate that the decrees in favor of appellees cannot be sustained. These principles of law are:

1. The *corpus* of mortgaged railroads, and railroad properties, belongs *first* to the mortgage bondholders *as their security.*

The mortgage bondholders have a *first and paramount lien* upon the *corpus* of the mortgaged estate, until their bonds, and bond interest, are fully paid.

2. The *earnings* of mortgaged railroads do *not* belong to the mortgage bondholders until all debts accrued for operating expenses, supplies and repairs, are *first* fully paid out of gross earnings. *Net earnings*, remaining after all debts accrued for operating expenses, supplies and repairs, are fully paid *do* belong to the mortgage bondholders until all matured interest on the

mortgage bonds is paid. If *gross earnings* are diverted to the benefit of mortgage bondholders, either in payment of bond interest, or in payment for betterments to the mortgaged estate, leaving debts accrued for operating expenses, supplies and repairs, unpaid, such diverted gross earnings must be restored by the bondholders, out of *net earnings* if possible; if not, out of the proceeds of sale of the *corpus* of the mortgaged estate. If there has been no diversion of gross earnings to the benefit of the bondholders, no restoration can be required from the bondholders. The restoration required from the bondholders must be measured by the diversion of gross earnings to the benefit of the bondholders. This rule of measurement is founded on justice and equity, and is inflexible.

These two principles apply with equal force whether the railroads are in possession of the railroad companies, or are in possession of Receivers appointed by the Court.

8. If during the receivership of a mortgaged railroad the Court finds it essentially necessary to incur receivership indebtedness in excess of receivership income, *for the express purpose of preserving the mortgaged estate from deterioration by waste and decay, or to preserve valuable rights, privileges and franchises from forfeiture, for the benefit of the mortgage bondholders;* such receivership indebtedness, incurred for such purposes, has a *first* lien upon the fund arising from the foreclosure sale of the railroad, superior and paramount in equity to the lien of first mortgage bonds.

This principle rests upon precisely the same foundation as the two principles above stated, namely: that the mortgage bondholders hold, absolutely and inflexibly,

the *first and paramount lien* upon the mortgaged estate; *but that the bondholders must pay for the preservation of their security, whenever, and only to the extent that, the gross earnings of the mortgaged estate are insufficient to secure its proper preservation.*

The leading case in support of the principles above stated, in fact the case by the decision of which these principles were first clearly announced and established, is *Fosdick* v. *Schall*, 99 U. S. 235.

Under an order of this Court granting to members of the bar who were interested in the questions presented by the record in that case, the privilege to file briefs, either in behalf of appellant or appellee, the writer of this brief, as a volunteer, and in the interest of other cases then pending which presented the same questions, both briefed and orally argued the case in behalf of appellee Schall. My work in the case, very properly, stands in the report to the credit of Mr. R. Biddle Roberts, Solicitor for Schall, because I was neither Solicitor, nor of counsel in the case.

This personal statement enables me to say that the strongest and best part of my brief in that case, in support of the principles above stated, consisted of a written opinion kindly furnished to me by that eminent jurist Hon. Thomas Drummond, then Circuit Judge of the Seventh Circuit. He had then had, perhaps, more practical experience in railroad receiverships than any other Federal Judge, and felt a deep interest in the final establishment of the principles of equity which experience had taught him should govern in railroad receiverships, as between general creditors and mortgage bondholders. The decision of this Court in that case, as announced by Mr. Chief Justice Waite, reversed the

decree rendered by Judge Drummond on one point directly involved in the appeals here presented, but on all other points confirmed and finally established the principles theretofore announced by him from the Circuit Bench.

The point on which this Court reversed the decree rendered by Judge Drummond in the Circuit Court, was this: The Circuit Court decreed that Schall be paid, out of the proceeds of foreclosure sale of the railroad, $14,568.75 for the use of his cars, delivered to the railroad company under a contract of conditional purchase and sale, during a portion of the receivership and during six months next prior to the first receivership.

Notwithstanding the fact that the record showed that both the Receiver and the Master in Chancery investigated and reported to the Court that the use of Schall's cars was necessary in the operation of the road, and that their use was beneficial and valuable to the receivership; this Court rejected the claim of Schall for rent of his cars, and reversed the decree in so far as it decreed payment to him of $14,568.75, out of the proceeds of foreclosure sale of the railroad, for car rental.

Hence it appears that this decision in the points it affirms, and also in the point it reverses, is directly applicable here, and covers substantially all the points involved in these appeals.

In announcing the decision of this Court in *Fosdick* v. *Schall* 99 U. S., pp. 252 to 255, Mr. Chief Justice Waite said:

"The income out of which the mortgagee is to be paid is the net income obtained by deducting from the gross earnings what is required for necessary operating and managing expenses, proper equipment, and useful

improvements. Every railroad mortgagee in accepting his security impliedly agrees that the current debts made in the ordinary course of business shall be paid from the current receipts before he has any claim upon the income. If for the convenience of the moment something is taken from what may not improperly be called the current debt fund, and put into that which belongs to the mortgage creditors, it certainly is not inequitable for the Court, when asked by the mortgagees to take possession of the future income and hold it for their benefit, to require as a condition of such an order that what is due from the earnings to the current debt shall be paid by the Court from the future current receipts before anything derived from that source goes to the mortgagees. * * * We think, also, that if no such order is made when the Receiver is appointed, and it appears in the progress of the cause that bonded interest has been paid, additional equipment provided, or lasting and valuable improvements made *out of earnings* which ought in equity to have been employed to keep down debts for labor, supplies, and the like, it is within the power of the Court to use the income of the receivership to discharge obligations which, but for the diversion of funds, would have been paid in the ordinary course of business. This, not because the creditors to whom such debts are due have in law a lien upon the mortgaged property or the income, but because, in a sense, the officers of the company are trustees of the earnings for the benefit of the different classes of creditors and the stock holders; and if they give to one class of creditors that which properly belongs to another, the Court may, upon an adjustment of the accounts, so use the income which comes into its own hands,

as, if practicable, to restore the parties to their original equitable rights. While, ordinarily, this power is confined to the appropriation of the income of the receivership and the proceeds of moneyed assets that have been taken from the company, cases may arise where equity will require the use of the proceeds of the sale of the mortgaged property in the same way. * * * The power rests upon the fact that in the administration of the affairs of the company the mortgage creditors have got possession of that which in equity belonged to the whole or a part of the general creditors. Whatever is done, therefore, must be with a view to a restoration by the mortgage creditors of that which they have thus inequitably obtained. It follows that if there has been in reality no diversion, there can be no restoration; and that the amount of restoration should be made to depend upon the amount of the diversion. * * * He asks to be paid rent for his cars; but he entered into no express contract with the company which requires such a payment, and there is nowhere to be found any proof of an implied obligation to make such compensation. Two years and more before the appointment of a receiver by the State Court he contracted to sell his cars to the company at an agreed price, payable in installments, secured by what was in legal effect a paramount lien upon the cars. Payments were made according to the contract until October, 1874, when they stopped. The cars remained in use after that, not under a new contract of lease, but under the old contract of sale. The price agreed upon not having been paid in full, the power of reclamation, which was reserved, has been exercised and sustained. The cars were not included in what was sold at the foreclosure

sale, and consequently have contributed nothing directly to the fund now in Court for distribution. So far as appears no moneys growing out of the receivership remain to be applied on the bonded debt; and, if there did, through the rent already paid by Receiver Anderson, full compensation has been made for all additions to that fund by means of the use of the cars. There is nothing to show that the current income of the receivership or of the company has been in any manner employed so as to deprive this creditor of any of his equitable rights. In short, as the case stands, no equitable claim whatever has been established upon the fund in Court. *Prima facie* that fund belongs to the *mortgage creditors*, and the presumption which thus arises has not been overcome. Schall, for the balance, his due, after his own security has been exhausted, occupies the position of a general creditor only.

"The decree of the Circuit Court will be reversed so far as it directs the payment of the sum of $14,568.75 to Schall, the appellee, from the fund in Court."

In *Huidekoper* v. *Locomotive Works*, 99 U. S., 258, 260, which was briefed and submitted in connection with the case of *Fosdick* v. *Schall*, *supra*, the facts were these: The Locomotive Works had delivered to the Chicago, Danville and Vincennes Railroad Company five Locomotives under conditional contracts of purchase and sale, in legal effect the same as the contracts of these appellees involved in these appeals. The Locomotive Works left the locomotives in the possession of the railroad company and of its Receivers for a long period of time after default in payments required by the contracts of conditional purchase and sale. Nearly a year after the first Receiver was appointed the Locomo-

tive Works took back the locomotives under the forfeiture clause of its contracts and filed its intervening petition for a large sum of money for the use of, and repairs to, the locomotives. A Bondholders Committee had been admitted as party to the cause, just as Bondholders Committees were admitted as parties in these appeals. The Bondholders Committee resisted the payment of any amount to the Locomotive Works under its intervening petition. The Court overruled the objections of the Bondholders Committee to such payment and rendered final decree in favor of the Locomotive Works for the sum of $15,793.75 and decreed that said sum be paid out of the proceeds arising from the foreclosure sale of the railroad. This Court in reversing the decree of the Circuit Court used the following language:

"We think this case is settled by that of *Fosdick* v. *Schall, supra*, p. 235. The amount found due the locomotive company is not in reality for the use and repairs of the engines, but on account of what was agreed to be paid for the purchase. The railroad company contracted to buy the engines and pay a certain price. The locomotive company retained a paramount lien to secure the sum to be paid. The debt so incurred was not paid. The lien of the locomotive company has been in effect foreclosed, and a balance of the debt still remains due. Whatever may have been the form of the transaction, this is its substance. So far as we can see, no equitable claim upon any fund in Court has been established as security for this debt. The locomotive company occupies the position of a general creditor with no special equities in its favor."

In *Burnham* v. *Bowen*, 111 U. S., 776, the claim of

Bowen was for coal furnished the railroad company for use in operating its locomotives, shortly before the appointment of the first Receiver.

The *net earnings* of the two receiverships, after paying all operating expenses incurred during the receiverships, were $25,000.

Instead of applying part of these net earnings to the payment of Bowen's claim for fuel, which was the only debt for operating expenses left unpaid when the first Receiver was appointed, the entire *net earnings* of the receiverships were applied to the payment of mortgage indebtedness upon depot grounds, and debts for right of way. The Circuit Court very justly held that this application of the entire *net earnings* of the receiverships to the benefit of the bondholders was such a diversion of earnings of the mortgaged estate as required restoration from the bondholders, and decreed the payment of Bowen's claim out of proceeds of foreclosure sale of the railroad.

In affirming the decree of the Circuit Court, this Court, speaking by Chief Justice Waite, at pages 782, 783, said:

"Under these circumstances we think the debt was a charge in equity on the *continuing income*, as well that which came into the hands of the Court after the Receiver was appointed as that before. When, therefore, the Court took the earnings of the receivership and applied them to the payment of the fixed charges on the railroad structures, thus increasing the security of the bondholders at the expense of the labor and supply creditors, there was such a diversion of what is denominated in *Fosdick* v. *Schall* the 'current debt fund,' as to make it proper to require the mortgagees to pay it

back. * * * We do not now hold, any more than we did in *Fosdick* v. *Schall*, or *Huidekoper* v. *Locomotive Works*, 99 U. S., 258, 260, that the income of a railroad in the hands of a Receiver, for the benefit of mortgage creditors who have a lien upon it under their mortgage, can be taken away from them and used to pay the general creditors of the road. All we then decided, and all we now decide, is, that if current earnings are used for the benefit of mortgage creditors before current expenses are paid, the mortgage security is chargeable in equity with the restoration of the fund which has been thus improperly applied to their use."

In *Union Trust Company* v. *Illinois Midland Company*, 117 U. S., pp. 477, 479, 480, as has been shown, this Court confirmed the decree of the Circuit Court, refusing to decree priority of lien upon proceeds of foreclosure sale in favor of claims for the use of, and repairs to, rolling stock during the receivership, and claims for money borrowed by the Receiver and applied directly to the payment of current operating expenses of the receivership.

While the bankruptcy of the Illinois Midland Company was a very bad and disastrous bankruptcy, it did not compare with the utter insolvency and hopeless bankruptcy of the Toledo, Cincinnati and St. Louis Railroad Company. If, therefore, such rulings were just and equitable in the Illinois Midland case, as they unquestionably were, the same rules of justice and equity apply with far more force to the claims of these appellees, and require the reversal of the decrees from which these appeals are prosecuted.

In *St. Louis, Alton and Terre Haute Railroad Company* v. *Cleaveland, Columbus, Cincinnati and Indianapolis*

Railway Company, 125 U. S. 658, the claim of the appellant was for rent of the railroad track and terminal facilities by means of which the appellee formed its connection between Terre Haute, Indiana, and the City of St. Louis, Missouri, and procured terminal facilities at St. Louis. The claim was for rent of the track and terminal facilities prior to, and during, the receivership of the Indianapolis and St. Louis Railroad Company—which was the original lessee of the St. Louis, Alton and Terre Haute Railroad.

A claim for rent of track and terminal facilities is certainly of as high a grade and as justly entitled to priority of lien over mortgage bonds, as claims for rent of rolling stock.

In rejecting the claim of the St. Louis, Alton and Terre Haute Railroad Company, and refusing to give it priority of lien over second and third mortgage bonds, this Court, speaking by Mr. Justice Matthews,—pp. 672, 673, 674,—said:

"It may be admitted that the petitioner is entitled in equity to a just and fair compensation for the use of its railroad by the Indianapolis and St. Louis Railroad Company, without regard to the lease, as between it and the lessee, and also that the minimum rent of $450,000 per annum, in monthly payments of $37,500, is no more than that just and fair compensation that the lessor company would be entitled to receive for the use of its road upon a *quantum meruit*. As between the petitioner and the Indianapolis and St. Louis Railroad Company, the amount of the indebtedness on that account is conclusively established by the decree of July 26, 1882, which, as between these parties, stands unreversed and unsatisfied.

"A different question, however, arises as between the petitioner and the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, as the owner of the mortgage bonds, for the satisfaction of which the Indianapolis and St. Louis Railroad has been sold. It remains, as between these parties, for the petitioner to establish that the debt to it of the Indianapolis and St. Louis Railroad Company, on account of this use and occupation, is a prior lien and charge upon the proceeds of the sale of the Indianapolis and St. Louis Railroad, entitled to preference over that of the second and third mortgages. Among the reasons urged in support of this preference are these,—because the arrearage is an unpaid operating expense of the Indianapolis and St. Louis Railroad Company; because it is a debt due to the petitioner as a connecting line; and because it consists of a portion of the gross earnings earned on the track of the leased line received by the Indianapolis and St. Louis Railroad Company, and held by it as trust money in equity belonging to the petitioner. Thia last reason, as formally presented, is limited to $164,052.82, being thirty per cent. of the gross earnings earned on the track of the leased line from April 1, 1878, to October 26, 1878, but is applicable as well to all other amounts received by the lessee of the gross earnings of the leased line which have not been accounted for.

"But none of these reasons, standing by themselves, are sufficient. It is undoubtedly true that operating expenses, debts due to connecting lines growing out of an interchange of business, and debts due for the use and occupation of leased lines are chargeable upon gross income before that net revenue arises which constitutes the fund applicable to the payment of the

interest on the mortgage bonds. But here there is no question in respect to current income. The fund in Court is the proceeds of the sale of the property, and represents its *corpus;* and it cannot be claimed that ordinarily the unsecured debts of an insolvent railroad company can take precedence in the distribution of the proceeds of a sale of the property itself over those creditors who are secured by prior and express liens.

"There are cases, it is true, where, owing to special circumstances, an equity arises in favor of certain classes of creditors of an insolvent railroad corporation, otherwise unsecured, by which they are entitled to outrank in priority of payment, even upon a distribution of the proceeds of a sale of the body of the property, those who are secured by prior mortgage liens. * * * The rule governing in all these cases was stated by Chief Justice Waite in *Burnham* v. *Bowen*, 111 U. S., 776, 783, as follows: 'That if current earnings are used for the benefit of mortgage creditors before current expenses are paid, the mortgage security is chargeable in equity with the restoration of the fund which has been thus improperly applied to their use.' There has been no departure from this rule in any of the cases cited; it has been adhered to and reaffirmed in them all."

These decisions above cited completely cover the claim of priority of lien asserted by these appellees, upon every point, and emphatically decide that no priority of lien exists in favor of appellees.

These appellees originally based themselves upon the proposition that the Court and its Receivers would be obliged to *specifically perform their contracts of conditional purchase and sale.* They left their equipment in the possession of the Receivers relying upon the theory

of specific performance of their contracts. Their intervening petitions prove this statement. For this reason they did not seek, or desire, to make any contracts with the Court, or the Receivers, regarding the use of their equipment. Any contracts made by them for the use by the Receivers of their equipment would have been in direct conflict with, and would have broken down, their theory of specific performance of their contracts.

If it is now claimed by appellees that the use of their equipment by the Receivers was a *necessity* in order to operate the railroad, the answer to such claim is, that the records contain conclusive proof that *no such necessity existed.* As soon as admitted as co-complainants, the Bondholders Committees besought the Court to compel these appellees to remove their equipment from the road, because a loss of from $500, to $1,000, was being incurred each day,—*without taking into account anything for use of their equipment.*

The report of Master Cox showed that the railroad company owned sufficient equipment to keep up such partial operation of the road as would preserve its franchises. Everybody conversant with the situation knew that any other than the most limited and partial operation of the road was absolutely ruinous, and destructive of the small margin of value still remaining for the first mortgage bondholders.

Under the interlocutory decree of December 1, 1884 all of the equipment of these appellees was delivered to them on January 1, 1885.

From that time forward the road was operated with about *one-third* of the equipment in the posession of the Receivers from August 1, 1883 to January 1, 1885. The equipment belonging to the railroad company had been

permitted by the Receivers to run down and become more or less out of repair, but notwithstanding this fact a very considerable portion of the equipment with which the railroad was operated subsequent to January 1, 1885 belonged to the railroad company, while the remaining part of it was rented from one or more of these appellees by regular contracts entered into by the Receiver under the approval of the Court.

(Rec. in Cause No. 252, pp. 327, 328, 358, 361.)

Any claim upon the part of these appellees that the use of their equipment by the Receivers from August 1, 1883 to January 1, 1885 was *beneficial* to the bondholders in any possible degree, would be too absurd for serious consideration. It would be a bootless task to undertake to convince these first mortgage bondholders that they were *benefited* by having their security submerged by receivership indebtedness at the rate of $1,000 per day. It would seem to be an equally unvailing task to attempt to convince a Court of equity that it *benefits* these first mortgage bondholders to strip them of their security, by giving priority of lien upon the proceeds of the foreclosure sales of the railroad, to general, unsecured creditors,—if creditors at all—who voluntarily, and without any contracts with the Court, left their equipment in the possession of the Receivers for seventeen months, the use of which equipment by the Receivers, instead of *benefiting* the receivership by increasing its earnings, daily added a heavy increment to the receivership indebtedness.

In view of the facts disclosed by the records in these appeals, and the decisions of this Court above cited, it is earnestly insisted on behalf of appellant Kneeland that these appellees are not entitled to priority of lien

over first mortgage bondholders, and that the decrees in their favor ought, in equity, to be reversed.

IV.

NO INDEBTEDNESS OF THE FIRST RECEIVERSHIP, FROM AUGUST 1, 1888, TO DECEMBER 1, 1888, INSTITUTED UNDER THE GENERAL CREDITOR'S SUIT BROUGHT BY BRAMAN OUGHT, IN EQUITY, TO BE PAID OUT OF THE FUND ARISING FROM THE FORECLOSURE SALES OF THE RAILROAD UNDER SUITS BROUGHT BY THE TRUSTEES IN THE FIRST MORTGAGES, IN PREFERENCE TO THE PAYMENT OF FIRST MORTGAGE BONDS; EXCEPTING ONLY SUCH INDEBTEDNESS AS WAS NECESSARILY INCURRED FOR THE PRESERVATION OF THE MORTGAGED ESTATE.

There certainly must be a wide difference between a receivership procured by, and instituted under the suit of, an unsecured creditor, and a receivership instituted under foreclosure suits brought by the mortgagees.

The principle of law is firmly established that the earnings of a railroad company up to the time proper demand for the possession of the railroad is made by the Trustees in the mortgages, or up to the time a receivership is instituted at the instance, and for the benefit, of the mortgagees, do not belong to the mortgagees, even although the mortgages in express terms cover income.

Dow v. *Memphis and Little Rock Railroad Company*, 124 U. S., 652.

Sage v. *Memphis and Little Rock Railroad Company*, 125 U. S., 361, 377.

Galveston Railroad v. *Cowdrey*, 11 Wall., 459, 483.

There can be no reason to doubt that this same rule applies with precisely the same force to earnings of a

receivership instituted under a suit brought by a general unsecured creditor.

If the mortgagees do not own and can not control the earnings of an unsecured creditor's receivership, why should the mortgagees be held liable to pay, out of the *corpus* of the mortgaged estate, the indebtedness incurred by such a receivership in excess of its total gross earnings?

It is conceded that if an unsecured creditor makes such a showing in his bill of complaint as to satisfy the Court that a receivership will save the railroad company from bankruptcy, and the railroad from disintegration; and that from the receivership earnings the unsecured debts of the company can be paid, thus preserving the mortgaged estate as a security for the bondholders; it would be proper and equitable for the Court to grant a receivership under such a creditor's bill.

This was so held by this Court in *Sage* v. *Memphis and Little Rock Railroad Company, supra.*

It may be further conceded that if, after a receivership has been instituted under a creditor's bill, it becomes necessary to create receivership indebtedness for the express purpose of preserving the railroad and valuable rights and franchises pertaining to it, for the mortgagees; such indebtedness,—*and only such indebtedness,*—may equitably be held to have priority of lien over mortgage bonds.

But to hold that a deficit between earnings and operating expenses,—the general indebtedness,—of a receivership instituted under an unsecured creditor's suit can be made a lien upon the fund arising from the foreclosure sales of the railroad, superior and paramount to the lien of first mortgage bonds, seems inequitable and unjust.

If there had been no unsecured creditor's receivership all that the unsecured creditors could have obtained would have been the *entire earnings of the railroad company.* They could not have obtained any lien whatever upon the *corpus* of the mortgaged estate, *unless* they could have first proved diversion of earnings to the benefit of the bondholders, and then only to the extent of restoration of the diverted earnings. Does general indebtedness of a receivership instituted under an unsecured creditor's bill, and for the benefit of unsecured creditors, stand on any better footing than this same general indebtedness of the railroad company would have stood if no unsecured creditor's receivership had been instituted? Does it inherently possess any higher equity than indebtedness incurred by the railroad company for like purposes? Most certainly it does not.

To hold, therefore, that general indebtedness of a railroad receivership instituted under an unsecured creditor's bill, has priority of lien, over first mortgage bonds, upon the proceeds of the foreclosure sales of the railroad, is, in effect, to hold that the general unsecured indebtedness of a railroad company incurred prior to the appointment of the Receiver under foreclosure proceedings brought by the mortgagees, has, in equity, priority of lien over first mortgage bonds. The equity in favor of unsecured indebtedness of the railroad company is just as strong as the equity in favor of indebtedness of like character incurred under an unsecured creditor's receivership.

Railroad receiverships in aid of floating debt creditors, have never been favored by this Court.

Railroad Company v. *Soutter*, 2 Wall, 510.
High on Receivers, Sec. 365.

In the cases at bar Braman, as a judgment creditor, brought suit and procured the appointment of Dwight as Receiver on August 1, 1883. Dwight continued Receiver under this creditor's suit until December 1, 1883, when Craig was appointed Receiver under the foreclosure suits brought by the trustees in the mortgages. The Dwight receivership fell very far short of earning enough to pay its current operating expenses, and accumulated a large receivership indebtedness for operating expenses,—without counting anything for equipment rental.

Nearly one-fourth part of the claims of these appellees for use of their equipment accrued during the four months of the receivership under the creditor's bill brought by Braman. An examination of the bill filed by Braman will prove that it did not, by any means, make the kind of showing described in the decision of this Court in *Sage* v. *Memphis and Little Rock Railroad Company, supra.*

Braman did not aver that he believed the railroad could be made to earn operating expenses. He did not aver that his debt or any other unsecured debt, could be paid out of earnings if a receivership was instituted. His chief averments consist of itemized lists of the vast indebtedness of the railroad company, and declarations showing its utter and hopeless insolvency. The reasons assigned for praying the appointment of a Receiver are: That the railroad would be broken into fragments, and sold out in its several separate divisions; and that these appellees might retake possession of their equipment and thereby embarrass the operation of the railroad unless a Receiver was appointed. Are these reasons sufficient to justity the appointment of a Receiver at the instance of an unsecured creditor?

It would have been an unmixed blessing to these bondholders if these appellees had taken possession of their equipment on, or prior to, August 1, 1883. The separate foreclosure and sale of the several divisions of the system was inevitable from the showing made by the Braman bill.

Whatever special indebtedness was incurred during the Dwight receivership for the express purpose of preserving the mortgaged estate has been paid. Such indebtedness, for such purpose, has never been questioned by the bondholders, or by appellant Kneeland, as purchaser and trustee for the bondholders.

Under the facts disclosed by the records, and the law applicable thereto, appellant Kneeland contends that no part of what may be termed the floating debt of the Dwight receivership can, in equity, be held to have priority of lien upon the fund arising from the foreclosure sales. He therefore asks that the decrees here appealed from may be reversed.

V.

EVEN IF IT WERE LEGAL AND EQUITABLE TO PAY THESE APPELLEES FOR THE USE OF THEIR EQUIPMENT BY THE RECEIVERS, OUT OF THE PROCEEDS OF THE FORECLOSURE SALES OF THE RAILROAD, IN PREFERENCE TO FIRST MORTGAGE BONDHOLDERS, —WHICH APPELLANT KNEELAND DENIES,—STILL THE CIRCUIT COURT ERRED IN REFUSING TO ADJUST AND COMPUTE THE AMOUNT TO BE PAID TO APPELLEES UPON THE BASIS OF MILEAGE EARNINGS OF SAID EQUIPMENT WHILE IN ACTUAL SERVICE; AND IN DECREEING THE PAYMENT OF AN AMOUNT FROM THREE TO FIVE TIMES AS LARGE AS AS COULD HAVE BEEN FOUND DUE UPON THE BASIS OF MILEAGE EARNINGS OF SAID EQUIPMENT.

Under the facts here disclosed it is insisted on behalf of appellant Kneeland, that, even if this Court should

hold that appellees are entitled to priority of lien on the fund in Court for payment for the use of their equipment by the Receivers,—which seems impossible under the decisions of this Court,—justice and equity would require that compensation to be computed on such a basis as would *only* allow appellees pay for the use of the equipment while in *actual service.*

It should be constantly borne in mind that appellees never made any contracts with the Receivers regarding the use of this equipment. They simply left it in the possession of the Receivers without contracts regarding its use, undoubtedly relying upon the theory that they could enforce specific performance of their contracts of conditional purchase and sale, and permanently unload their equipment upon the receivership, and get the full contract price, and interest, out of the proceeds of the foreclosure sales of the railroad.

Now, while so leaving their equipment in the possession of the Receivers, voluntarily, and without contracts, is it just and equitable for them to to be paid *monthly rental* for all of their equipment *whether it did, or did not, perform actual service?*

Would it not be far more just and equitable to measure the compensation for the use of each car by *its actual mileage service?*

This would seem to be the equitable rule in all cases of equipment rental.

Especially ought this rule to apply in the cases at bar,—if any compensation at all is allowed, which we insist cannot, in equity, be done,—because it is a demonstrated fact that the receiverships made no money by the use of this equipment, the more the railroad was operated the more did the receivership indebtedness increase.

Immediately after they were admitted as co-complainants, the Bondholders Committees, by their petition, urged the Court to stop the operation of the railroad, except to the extent it could be operated with the equipment belonging to the railroad company, and prayed the Court not to permit the Receivers to use any equipment not belonging to the company, unless it was used on the basis of *mileage earnings*,—which then was, long had been, and still is the usual, and well-nigh universal, method of adjusting compensation for the use of railroad equipment.

(Rec. in Cause No. 252, pp. 287 to 292 and 321, 322.)

In the exceptions of appellant Kneeland to the final report of Master Fishback touching the rental of this equipment, the question of adjusting any rental to be allowed, on the basis of *mileage earnings* was again pressed upon the attention of the Court, and the refusal of Master Fishback to adopt that basis was assigned as one of the exceptions.

(Rec. in Cause No. 252 p. 553.)

The Court overruled this exception and decreed payment to appellees for the use of their equipment during the entire period of both receiverships, on the basis of *monthly rental* for each piece of equipment, *whether it did, or did not, turn a wheel during the month.*

The evidence in the record of the second of these appeals shows clearly the injustice, and extreme hardship, of this method of computing rental for this equipment. This evidence has already been cited and commented upon, *supra* pp. 31, 32, 33.

While earnestly insisting that no compensation whatever can legally and equitably be allowed to these appellees for the use of their equipment by the Receiv-

ers, as a lien upon the proceeds of the foreclosure sales of the railroad prior and paramount to the lien of first mortgage bonds; appellant Kneeland further insists that if such compensation is finally allowed it ought, in equity, to be measured and computed upon the basis of *mileage earnings of the equipment while in actual service;* and that, therefore, these decrees ought to be reversed.

It has been my purpose, by facts drawn from the records of these two appeals, and by the application of established principles of law and equity to these facts, to establish three propositions, namely:

First. That these appellees are not, in law and equity, entitled to payment of their claims for the use of their equipment by the Receivers, out of the fund arising from the foreclosure sales of the railroad, in preference to payment of first mortgage bonds:

1. Because no earnings of the railroad company prior to the receiverships were diverted to the benefit of the first mortgage bondholders.

2. Because no earnings of the receiverships, or either of them, were diverted to the benefit of the first mortgage bondholders.

3. Because the use of the equipment by the Receivers neither added value to the mortgaged estate; nor increased the fund arising from the foreclosure sales of the mortgaged estate.

4. Because the use of the equipment by the Receivers was not a necessity for the preservation of the property, rights and franchises of the mortgaged estate; and because no earnings were made during either of the receiverships, but on the contrary a large receivership indebtedness for ordinary operating expenses was incurred by each of the receiverships,—without taking

into account anything for the use of the equipment belonging to appellees.

5. Because these appellees did not make, or seek to make, any contracts with the Court regarding the use of their equipment, but voluntarily left it in the possession of the Receivers for the express purpose of attempting to enforce specific performance of their contracts of conditional purchase and sale, through, and by means of, the use of said equipment by the Receivers.

Second. That the mortgage lien of the first mortgage bondholders upon the railroad, and the proceeds of the foreclosure sales of it, cannot, in law and equity, be subordinated to any receivership indebtedness incurred by the receivership instituted under the unsecured creditor's suit brought by Braman,—excepting only indebtedness incurred for the express purpose of preserving the railroad and its franchises for the benefit of its mortgagees; and that the claims of these appellees do not constitute such indebtedness.

Third. That, even if these appellees were entitled to compensation for the use of their equipment by the Receivers, the Circuit Court erred in refusing to adjust and compute such compensation upon the basis of mileage earnings of the equipment while in actual service.

Appellant Kneeland, in his own behalf as purchaser, and, as Trustee, in behalf of the first mortgage bondholders, prays the Court that the decrees of the Circuit Court may be reversed.

R. G. Ingersoll, New York,
Clarence Brown, Toledo, O.,
Solicitors for Appellant.

Respectfully submitted,
by
John M. Butler,
Of Counsel for Appellant.

Indianapolis, Ind., March 17, 1890.